

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK F. FAGAL, JR.	:	
	:	
<i>Plaintiff,</i>	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 3:14-cv-02404-ARC
MARYWOOD UNIVERSITY,	:	
	:	ELECTRONICALLY FILED
<i>Defendant.</i>	:	
	:	

AMENDED COMPLAINT

Frederick F. Fagal, Jr., Plaintiff, hereby brings this Amended Complaint against Marywood University, Defendant, and avers as follows:

PARTIES

1. Marywood University (hereinafter “Marywood” or the “University”) is a university and a Pennsylvania domestic non-profit corporation located in Scranton, Pennsylvania.

2. Frederick F. Fagal, Jr. (hereinafter “Professor Fagal”) is a natural person who has resided in New York State for more than 20 years and intends to remain there indefinitely. Professor Fagal is thus a citizen of New York State.

3. Professor Fagal earned a bachelor’s degree in 1968 from Union College in Schenectady, New York, a Masters in Economics from Cornell

University in 1971, and a Ph.D. in Social Studies Education from Syracuse University in 1981.

4. Professor Fagal became a member of Marywood's faculty in the fall semester of 1987.

5. Professor Fagal attained tenure at Marywood in September 1994.

6. Marywood terminated Professor Fagal's tenure and employment on April 3, 2012.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action under 28 U.S.C. § 1332 as the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs, and is between citizens of different states.

8. This Court has general personal jurisdiction over Marywood as the University has continuous and systematic contacts within the Commonwealth of Pennsylvania.

9. Venue is proper under 28 U.S.C. § 1391 as a substantial portion of the events giving rise to Professor Fagal's claim occurred within the Middle District of Pennsylvania.

FACTUAL BACKGROUND

10. In 1992, Professor Fagal entered into an Agreement and Appointment for Full-Time Faculty with Marywood. The agreement states that “[t]he policies and practices listed in the Faculty Manual are agreed upon by the parties hereto.” A partially redacted copy of that agreement is attached hereto as Exhibit A.

11. The “Faculty Manual” was also known as or later became known as the “Faculty Handbook.”

12. Professor Fagal and Marywood entered into written agreements for him to serve on the University’s full-time faculty for each year between 1992 and 2012.

13. Professor Fagal became a tenured faculty member of Marywood in September 1994.

14. On July 1, 2010, Marywood issued an edition of its Faculty Handbook. The first four pages of the Faculty Handbook are attached hereto as Exhibit B. The third page states, in part: “This handbook is effective with the 2010-2011 faculty letters of agreement.” The fourth page states, in part: “Policy changes require the approval of the President of the University and, when required, the Board of Trustees. Changes are disseminated by the Secretary of the University. They are

effective with formal approval and placement in the Marywood University Policies and Procedures Manual.”

15. In May 2011, Professor Fagal entered into an agreement with Marywood stating that he would serve as a tenured Associate Professor from August 22, 2011 to May 18, 2012 and earn a specific salary. A partially redacted copy of that agreement is attached hereto as Exhibit C.

16. At the time that Professor Fagal and Marywood entered into the May 2011 agreement, Marywood’s “Contractual Agreements with Faculty Members” policy stated that this type of agreement is a “binding contract covering a specific period of time and as a vehicle to renew, adjust and/or alter the terms of the original contract regarding appointment, rank, tenure, salary, benefits, etc.” The same policy stated: “Tenure is a term designating guaranteed continuous appointment to full-time faculty members until retirement.” A copy of that policy is attached hereto as Exhibit D.

17. If Professor Fagal was ever an at-will employee of Marywood, he was no longer so upon attaining tenure. His tenure and employment could only be terminated in conformance with Marywood’s Policies and Procedures Manual.

**Marywood Tears Down Professor Fagal's Posters Inviting Students to a
Lecture on Free Speech**

18. In November 2011, Professor Fagal invited and paid for a speaker from the Philadelphia-based Foundation for Individual Rights in Education (hereinafter "FIRE") to give a presentation to his "Introduction to Social Science" course at the end of the month. The topic of the presentation was "Know Your Rights: Free Speech and Thought Reform on Campus," which was related to Professor Fagal's teaching of the United States Constitution.

19. Professor Fagal received approval from Marywood to hang posters (which he arranged to have printed and he paid for) announcing the FIRE presentation and inviting any and all Marywood students to attend at the University's Comerford Auditorium.

20. On or around November 28-29, 2011, Marywood personnel tore down almost all of the FIRE posters. A Marywood official confirmed that the University was responsible. Marywood did not provide any notice to Professor Fagal before or after the FIRE posters were torn down.

21. When Professor Fagal complained about the poster tear-downs shortly thereafter, Marywood's Vice President for Academic Affairs could not identify any written policy statements by the University that warranted these actions.

22. Professor Fagal attempted to secure an apology by Marywood as well as reimbursement for the posters that were torn down, but Marywood refused these requests.

23. On January 13, 2012, Professor Fagal sent an email from his personal email address to Marywood faculty members about the removal of his posters. In that email, Professor Fagal criticized the Marywood administration for tearing down his posters and for its weak commitment to free speech generally.

24. The January 13th email also contained hyperlinks to two related videos criticizing Sister Anne Munley, President of Marywood, and several other administrators for ordering or participating in the poster tear-downs and again for a weak commitment to free speech. The videos were posted to YouTube.

Marywood Suspends Professor Fagal

25. At approximately 8:45 AM on January 23, 2012, a Marywood dean visited Professor Fagal's office as he was preparing for his 9:00 AM class and stated that President Munley was summoning him to a meeting at the same time.

26. At the 9:00 AM meeting, President Munley asked Professor Fagal whether he posted the two-part video on YouTube. Professor Fagal acknowledged posting the video. Professor Fagal was asked to explain his actions, but when he attempted to raise the issue of the poster tear-down, that topic was not allowed.

Permitted no context to “explain” his actions, Professor Fagal could “explain” nothing. President Munley then told Professor Fagal that his employment was suspended effective immediately and that he should return his keys and University identification card to Marywood’s Assistant Vice President for Human Resources.

27. Several hours later, Marywood’s Assistant Vice President for Human Resources sent Professor Fagal an email confirming that he had been suspended and directing him to clean out his University office.

28. At the time of Professor Fagal’s suspension, Marywood’s “Progressive Discipline” policy (attached hereto as Exhibit E) stated:

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

....

Suspension. The faculty member may be suspended by the Vice President for Academic Affairs at any time during the proceedings involving him or her. Suspension

is justified if immediate harm to the faculty member or others is threatened by the person's continuance in the faculty position.

29. Marywood's suspension of Professor Fagal was a breach of contract in several ways. First, there was nothing "progressive" about the discipline meted out to Professor Fagal. There was no oral or written warning—nor was any opportunity for monitored assistance provided.

30. Second, President Munley—not the Vice President for Academic Affairs—suspended Professor Fagal.

31. Third, at the time of the suspension, there was no immediate harm to Professor Fagal or to others threatened by Professor Fagal's continuance in his faculty position—and no Marywood official or representative has ever stated otherwise to him.

Marywood Moves to Terminate Professor Fagal

32. On January 24, 2012, approximately 28 hours after President Munley suspended Professor Fagal, she sent him a letter stating that she was "recommending that [his] tenure and employment with Marywood be terminated immediately."

33. In the January 24th letter, President Munley provided a "Statement of Charges," which she was "prepared to send . . . to a duly appointed faculty

committee for review along with the emails and videos you forwarded to members of our community.”

34. The end of the second “charge” contained in the January 24th letter is missing, and therefore it was initially impossible for Professor Fagal to know the full extent of the “charges” against him.

35. After Professor Fagal’s attorney wrote to President Munley requesting an amended “Statement of Charges” —among other breaches that he identified—President Munley sent a second letter to Professor Fagal on February 8, 2012.

36. In the February 8th letter, President Munley again stated that she was recommending that Professor Fagal’s “tenure and employment with Marywood be terminated immediately” and offered a “Statement of Charges.”

37. In the second “charge” against Professor Fagal, President Munley accused him of violating Marywood’s Civil Rights Policy.

38. Near the end of the February 8th letter, President Munley wrote:

As a result of this recommendation, I am prepared to send this statement of charges to a duly appointed faculty committee for review along with the emails and videos you forwarded to members of our community. In order to do so and out of respect for your privacy, I would ask that you please sign and return to me the attached authorization granting the University permission to do so. That faculty committee may agree or disagree with my

recommendation. Once I receive the review committee's determination, I will finalize my decision. Should you choose to forego that faculty review, I will finalize my recommendation based upon my own findings and conclusions.

39. A document titled "Release of Personal Information" enclosed with President Munley's February 8th letter states, in part:

____ I DO NOT grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a faculty review committee comprised of tenured faculty. I understand that by refusing such permission that there will be no faculty committee review of Sister Anne Munley's decision to terminate my tenure and employment with the University prior to it being finalized.

OR

____ I DO grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a review committee comprised of tenured faculty.

40. President Munley's recommendation to terminate Professor Fagal's employment and tenure violated the "Progressive Discipline" policy in effect at the time. That policy contained one sentence addressing dismissal: "If remedial actions(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member."

41. Marywood took no “remedial actions” to “resolve the issues” that led to Professor Fagal’s suspension. Professor Fagal’s suspension began on the morning of January 23, 2012, and the first letter recommending his termination arrived in his inbox at 1:11 PM on the next day. Nor did Marywood attempt any “remedial actions” before sending the February 8th letter.

42. President Munley’s February 8th letter also violated Marywood’s “Civil Rights Complaint Procedures” policy in effect at the time. That policy required an individual allegedly aggrieved by a civil rights violation to file a complaint, among other procedures. Those procedures “must be followed any time a member of the Marywood University community believes s/he has been the victim of . . . discrimination, harassment, or assault by any member of the University community” A copy of that policy is attached hereto as Exhibit F.

43. No Marywood employee filed a civil rights complaint against Professor Fagal after his January 13, 2012 email, and thus President Munley’s attempt to “charge” him with violating the University’s Civil Rights Policy was a breach of Marywood policy as well as a breach of contract.

Marywood Refuses to Allow Professor Fagal to Appeal His Suspension

44. In President Munley’s January 24th and February 8th letters, she asked Professor Fagal to authorize her to send the “statement of charges” against

him to a “duly appointed faculty committee for review” of her decision to terminate his employment and tenure.

45. Nowhere in the letters or the authorizations did President Munley offer to convene a faculty committee to review her suspension of Professor Fagal.

46. President Munley offered Professor Fagal two choices: a faculty review of her recommendation to terminate him or the “finalization” of her own decision to terminate him.

47. The “Progressive Discipline” policy in effect at the time of President Munley’s letters stated that faculty members “have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member.”

48. On February 2, 2012, Professor Fagal, through his attorney, elected in writing to convene two ad hoc faculty committees: one for President Munley’s decision to suspend him and the other for her recommendation to terminate him.

49. On February 9, 2012, Marywood, through its attorney, rejected Professor Fagal’s request to convene an ad hoc committee to review his suspension. The letter stated, in part, that Professor Fagal had breached his contract with Marywood and thus the University “had no further contractual obligations to him.”

50. Marywood's position—if accepted—would mean that any time that the University deemed—in its sole discretion—that a member of its community breached a contract with the University, then the University could disregard any of its own disciplinary policies. Such a position is absurd.

Professor Fagal Files a Formal Grievance Against President Munley; she Retaliates by Terminating Him.

51. On February 22, 2012, Professor Fagal filed a formal grievance against President Munley under Marywood's "Faculty Grievances and Appeals" policy. A copy of that grievance is attached hereto as Exhibit G.

52. In the grievance, Professor Fagal alleged that President Munley violated Marywood policy by improperly suspending him, by improperly moving to terminate his employment and tenure, and by not accepting his request to convene an ad hoc committee to appeal the suspension.

53. On March 26, 2012, the Chair of Marywood's Faculty Grievance Committee sent a letter to Dr. Fagal summarizing his grievances and concluding: "I now write to inform you that in reviewing each of these grievances, we have found no evidence of improper action on President Munley's part which would constitute a legitimate grievance."

54. On April 3, 2012, President Munley sent a letter to Professor Fagal stating in part: “Since the grievance process is now complete, I have decided to finalize my recommendation. As a result, your employment with Marywood and your tenure are terminated effective today, April 3, 2012.” A copy of that letter is attached hereto as Exhibit H.

55. One paragraph after declaring Professor Fagal’s relationship with Marywood at an end, however, President Munley offered to convene the two ad hoc faculty committees that he had been requesting for months. President Munley claimed: “I am doing this despite the fact that on two separate occasions you refused my offer and did not choose to convene an ad hoc committee to review my decision to suspend you and my recommendation to terminate your employment and tenure before I finalized my decision.” President Munley’s claim that Professor Fagal did not convene an ad hoc committee to review the suspension decision is verifiably false.

56. Further, President Munley’s offer to convene two ad hoc committees was effectively a dead letter because she had—in the very same writing—declared the termination of his employment and tenure to be final.

57. The “Progressive Discipline” policy in effect at the time conveyed that before a faculty member may be dismissed, an ad hoc faculty committee must

recommend a formal action toward dismissal. Therefore, President Munley's termination of Professor Fagal's employment on April 3, 2012 was premature and in contravention of Marywood policy.

58. President Munley's premature termination also violated the "Faculty Grievances and Appeals" policy (attached hereto as Exhibit G), which stated that "[g]rievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome" and that "[g]rievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant."

59. On July 2, 2012, a group of Marywood faculty members calling themselves the "Faculty Senate Ad Hoc Hearing Committee" ("FSAHHC") issued a document titled "Review of Sister Anne Munley's Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal."

60. The FSAHHC did not concur with all of the charges lodged against Professor Fagal. Nonetheless, the FSAHHC concurred with President Munley's decision to revoke the tenure and terminate the employment of Professor Fagal.

61. Contrary to Marywood's "Progressive Discipline" policy and President Munley's April 3rd letter, neither the FSAHHC nor any other ad hoc faculty committee reviewed Professor Fagal's suspension.

62. At the time of the FSAHHC's decision, Marywood's "Progressive Discipline" policy stated, in part:

Faculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member Should a faculty member request that such a committee be convened twice (i.e., once for suspension and once for dismissal), the membership of the committee may be similar or different, a determination which is made by the President of the University in consultation with the faculty member and the Vice President for Academic Affairs.

63. Accordingly, the failure of any Marywood ad hoc faculty committee to review Professor Fagal's suspension was a breach of Marywood's "Progressive Discipline" policy.

64. Had an ad hoc faculty committee actually reviewed Professor Fagal's suspension, it would have likely found that suspension improper given that he posed no harm to himself or to others. Such a finding would have logically caused the ad hoc faculty committee reviewing Professor Fagal's termination to rule in his favor given that the propriety of a dismissal depends on the propriety of a suspension under the "Progressive Discipline" policy.

65. On July 13, 2012, President Munley sent Professor Fagal a letter stating, in part: "My decision to terminate your employment with Marywood University and your tenure effective April 3, 2012 stands."

66. Professor Fagal received his agreed-upon salary through August 2012, at which point Marywood ceased paying him.

Postscript

67. After terminating Professor Fagal, the University amended its disciplinary policies so as to allow it to handle future “Professor Fagals” in the same way—but without breaching such policies. Accordingly, Marywood is well-aware that it breached its own policies as alleged above.

COUNT I **(Breach of Contract)**

68. Professor Fagal adopts by reference each and every allegation stated above.

69. Marywood’s Faculty Manual, Faculty Handbook, Policies and Procedures Manual, and the letter agreements referenced above constitute binding contracts between Professor Fagal and the University.

70. Marywood repeatedly breached duties owed to Professor Fagal under the above-referenced contracts.

71. Marywood’s breaches of its duties to Professor Fagal caused him to suffer damages, including but not limited to the loss of continued salary and other benefits owed to tenured faculty members.

RELIEF REQUESTED

WHEREFORE, Professor Fagal demands judgment in his favor and against Marywood for:

- A.** Back pay in an amount to be proved at trial;
- B.** Reinstatement of Professor Fagal's employment and tenure with Marywood;
- C.** Front pay up to the reinstatement of Professor Fagal's employment with Marywood or—if reinstatement is not awarded—through the end of Marywood's spring semester in 2018 (when Professor Fagal would be 72 years old);
- D.** Stock market foregone gains on 403(b) salary deductions not invested in Professor Fagal's Fidelity retirement account;
- E.** Pre-judgment interest;
- F.** Post-judgment interest;
- G.** Reasonable attorneys' fees and court costs; and
- H.** Such other and further relief to which Professor Fagal may be entitled at law or equity.

Respectfully,

By: s/ Jonathan Z. Cohen
Jonathan Z. Cohen (PA205941)
175 Strafford Avenue, Suite 1
Wayne, Pennsylvania 19087-3340
(484) 253-1175
(215) 839-8951 (fax)
jzc@jzc-law.com

Attorney for Plaintiff Frederick F. Fagal, Jr.

Date: January 15, 2015

MARYWOOD COLLEGE
Scranton, Pennsylvania
AGREEMENT and APPOINTMENT
for
FULL-TIME FACULTY

TERMS OF THIS AGREEMENT are offered on the 28th day of March, A.D. 1982
to Dr. Frederick E. Pagani, Jr.

17 East Lake Street, Scranton, NY 13350
party of the first part, by Marywood College, a non-profit corporation, created and existing by and under the laws of the Commonwealth of Pennsylvania, party of the second part.

The parties witness that, in consideration of the mutual promises and agreements herein contained, the following terms are in effect from September 1, 1982 to May 31, 1983 :

(1) Type of Appointment Full-Time (9 Months)

Rank Assistant Professor

Department Social Science (7360)

Responsibility to Department Chairperson

Salary \$ per

Employee Benefits:

Social Security (FICA) \$

Retirement (TIAA-CREF)

Hosp. Ins. (B.C.-B.S.-M.M.)

Workers' Compensation

Total Disability Ins. (TIAA)

Life Insurance (TIAA)

Total Compensation \$

- (2) The policies and practices listed in the Faculty Manual are agreed upon by the parties hereto.
- (3) Benefits other than Social Security must be applied for by the faculty member at the Office of Personnel Services. Failure to apply indicates waiver of the benefit.
- (4) This signed Agreement must be returned to the President's office by the date specified.
- (5) U.S. Government form W-4 must be on file in the Office of Personnel Services.

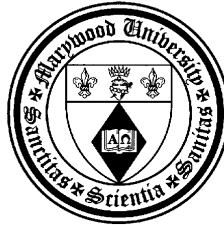
IN WITNESS WHEREOF, the said parties have hereunto agreed to the above terms and have set their hands at Marywood College, in said State, as follows:

March 21, 1982
Date Accepted

(Signed) Frederick E. Pagani, Jr.
First Party

Date Executed

(Signed) _____
President



Marywood

U N I V E R S I T Y

FACULTY HANDBOOK

July 1, 2010

**Reap College of Education and Human Development
Insalaco College of Creative and Performing Arts
College of Health and Human Services
College of Liberal Arts and Sciences
School of Architecture**

Address comments or questions
to

Secretary of the University
Marywood University
Scranton, PA 18509-1598

FACULTY HANDBOOK

**This handbook is effective with
the 2010-2011 faculty letters of agreement.**

**Marywood University
Scranton, Pennsylvania
18509**

INTRODUCTION

The faculty of Marywood University are dedicated professionals who have an important role in providing intellectual leadership. They are committed to the service of the University, their disciplines, and others. While the teaching role of the faculty is primary, they devote time and energy to a variety of activities. They serve on committees and contribute their talent to strategic planning, research, grant writing, and recruitment.

It would be impossible to capture in detail in one handbook all of the many issues that affect faculty. The *Faculty Handbook* is intended to be one of several sources of general guidance. It brings together brief descriptions of the privileges and obligations that are most central to membership on the faculty of Marywood University and selected other information of special interest.

Nothing contained in the *Faculty Handbook* negates the right of the University to augment, repeal, or revise its policies at any time. Policy changes require the approval of the President of the University and, when required, the Board of Trustees. Changes are disseminated by the Secretary of the University. They are effective with formal approval and placement in the *Marywood University Policies and Procedures Manual*.

The *Faculty Handbook* is maintained by the Secretary of the University, who is responsible for updating and editing it. This assumes the authority to make non-substantive changes that improve the precision of its language, and substantive changes that are necessary to conform to applicable laws. To the extent that modification and revision of Chapter Two constitute other substantive changes, the Faculty Senate will be consulted in the interest of collegiality.



Marywood

UNIVERSITY

Tenured Faculty
Letter of Agreement
2011-2012 Academic Year

May 10, 2011

Dr. Frederick F. Fagal, Jr.,
17 East Lake Street
Skaneateles, NY 13152

Dear Dr. Fagal, Jr.,

This Letter of Agreement is offered to you for the 2011-2012 Academic Year. In accord with the agreed upon Salary Plan, your salary reflects a 2.5% annual increase of \$ [REDACTED]

Other terms of this agreement are as follows:

Term:	8/22/2011 to 5/18/2012
Type of Appointment:	Full-Time (9 months) Tenure
Rank:	Associate Professor
College:	Liberal Arts & Sciences
Department:	Social Sciences
Responsible to:	Department Chairperson
Salary:	\$ [REDACTED]

Faculty members must apply for benefits other than Social Security and Worker's Compensation through the Human Resources Department. Full-time faculty benefits include health, dental, long-term disability, group life, and accidental death and dismemberment under the Flexible Benefits Plan. Elections are made by June 1 of each year for the subsequent fiscal year beginning July 1. Retirement contributions by the University vary based on the contribution level selected by the faculty member. The appropriate government forms, including Form W-4 and I-9, must be completed and on file in the Human Resources Department.

This agreement is valid for one month from the date of this letter. The original copy of this Letter of Agreement must be signed and returned to my office by June 10, 2011. If you do not return the original signed copy by June 10, it will be assumed that you are not returning to Marywood. On behalf of the Board of Trustees and myself, I express our gratitude for your dedicated service and commitment to Marywood University. May God continue to bless you.

Sincerely,

Aster Anne Munley IHM

Anne Munley, IHM, Ph.D.
President

Agreed this 25 day of May, 2011

Signature

Frederick F. Fagal, Jr.



Contractual Agreements with Faculty Members



Policy Statement

Full -Time Faculty

The *Letter of Agreement* is the official contract issued to a faculty member at the time of appointment or reappointment. It is a statement of conditions and obligations mutually agreed to by the faculty member and Marywood University. It serves as a binding contract covering a specific period of time and as a vehicle to renew, adjust and/or alter the terms of the original contract regarding appointment, rank, tenure, salary, benefits, etc.

Faculty contracts are normally for a period of nine months or twelve months.

Ordinarily, the academic year will begin no earlier than two weeks before Labor Day and will end no later than nine months from that date.

A copy of the *Letter of Agreement* is retained by the faculty member. Copies are also on file in the Office of Human Resources.

In general, any faculty member, who intends to be a long-term stakeholder in the University and who has the appropriate terminal academic degree, should have either a tenure appointment or an appointment probationary for tenure.

Categories of Full-Time Appointment

Regular membership in a Faculty includes appointments with continuous tenure, appointments probationary for tenure, and contract appointments without tenure.

Membership in the Faculty of a School or Department is held by persons with valid appointments to one of the four generally recognized Faculty ranks, namely, Professor, Associate Professor, Assistant Professor, or Instructor.

The University, however, also requires the services of professionally competent individuals to meet teaching and service responsibilities in selected areas or positions in which assignments do not necessarily include research or creative work. To meet these responsibilities effectively and to be competitive in attracting and retaining needed professional personnel, the University has established and recognizes a third kind of Regular Faculty appointment: Regular Contracts Appointments without Tenure.

Contract Appointments with Tenure

The probationary period shall not exceed seven years of full-time teaching at Marywood, with application for tenure being made in the sixth year. Faculty members on leave during the probationary period must follow the policy on Leaves of Absence. Prior service at Marywood University or at another regionally accredited, four-year college or university may be credited toward the fulfillment of the probationary period as indicated in the original *Letter of Agreement*.

Tenure is a term designating guaranteed continuous appointment to full-time faculty members until retirement. It implies a mutual commitment on the part of the faculty member and the University and cannot be taken lightly. The commitment of a faculty member who requests tenure is as deep and binding on the faculty member as it is on the University. Just as the conferring of tenure by the University recognizes the competence of an individual faculty member, submission to the University of an application for tenure suggests a strong acceptance by that individual of the goals and objectives of the University. The request represents commitment to work jointly with faculty, students, administrators, and members of the staff for the growth and welfare of the University. It is a commitment to devote one's energies to continued personal development and continued high levels of achievement as a member of the Marywood academic community. It is a definite assertion of career goals; it is expected that faculty will not lightly withdraw from this relationship.

Once tenure is granted, it will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or lack of professional competency as demonstrated in instruction and/or research. In addition, the University may be required to discontinue tenure because of severe financial exigencies of the University or reorganization of the department and/or curriculum resulting in lack of need as described in *Retrenchment of Faculty*.

A faculty member with an appointment probationary for tenure may apply for a Clinical or Per Annum appointment, if a vacancy exists, under normal procedures for recruitment and appointment. However, a faculty member in probationary status is not eligible to apply for such a change of status if that faculty member has been reviewed for tenure with the result that tenure was not recommended.

Contract Appointments without Tenure

Two types of full-time contract appointments without tenure are available: Clinical Faculty Appointments and Per Annum Faculty Appointments.

Clinical Faculty

On the recommendation of the cognizant chairperson, or person acting in the capacity of a chair, with the approval of the Vice-President for Academic Affairs and based on a written description of the teaching and related duties, a Faculty position involving full-time teaching in a clinical or professional skills program may be designated as a non-tenure track clinical position. Titles associated with clinical positions shall be appropriately distinguishing, such as "Clinical Assistant Professors" as determined by the Vice-President for Academic Affairs.

The initial appointment may be for one or two years and may be renewed for successive terms under the same procedures as those applying to faculty members with appointments probationary for tenure. After six years of continuous service, subsequent reappointments may be for periods of up to five years but without tenure.

Per Annum Faculty

With the approval of the Vice-President for Academic Affairs and based upon a written description of the teaching and related duties, a faculty position involving full-time teaching for a period of one year may also be designated as a non-tenured position (Per Annum).

Normally a Per Annum appointment may be renewed on an annual basis for up to an additional five years, followed by a terminal contract for the seventh year of employment. If an exception is made, it will be done by

the Vice-President for Academic Affairs in consultation with the appropriate dean and director or chairperson. Notification of non-renewal shall follow the notice requirements of the Non-Reappointment of Full-Time Faculty Member policy.

Clinical or Per Annum appointments may be made at the level of Instructor, Assistant Professor, Associate Professor or Professor. A Faculty Member with a Clinical or Per Annum appointment is accorded parity of compensation, benefits and perquisites, and governance and voting rights, as with other Faculty members of comparable rank.

A Faculty member with a Clinical or Per Annum appointment may apply for an appointment probationary for tenure, if a vacancy exists, under normal procedures for recruitment and appointment. In such a case, time served in the Clinical or Per Annum position beyond the first year counts toward the maximum allowable period of probationary service. If time served in the Clinical or Per Annum position exceeds the maximum allowable period of probationary service, the Faculty member shall be considered to have completed five years of probationary service and shall be reviewed for tenure upon application for the change of status. In either case, in the event the outcome of the review is negative, the terms of the current Clinical or Per Annum appointment shall be honored but the Faculty member shall not be eligible for subsequent reappointment to the Clinical or Per Annum position.

Pro - Rata Faculty

Pro-rata ranked faculty serve on nine-month or twelve-month contracts. Their contracts are processed and issued as are those of full-time faculty.

The initial appointment of pro-rata faculty determines their rank; their *Letters of Agreement* are awarded for one year at a time with no implied obligation of continuous appointment.

Part -Time Faculty

Part-time faculty are those faculty members who ordinarily teach from one to six credit hours per semester and are not usually otherwise employed in the affairs of the University. They receive a formal appointment on a semester basis, provided enrollment justifies it at registration time. Part- time faculty members are not eligible for tenure.

Letters of Agreement

Letters of Agreement for continuing faculty members are issued on or before May 10. *Letters of Agreement* are distributed from the office of the President of the University.

Appointment Procedures

Members of the faculty are appointed by the President of the University. Prospective faculty members are interviewed and recommended by the chairperson and faculty of the department in which a vacancy exists to the Dean and Vice-President for Academic Affairs.

The formal offer of employment made by the Vice President for Academic Affairs to a prospective faculty member contains the conditions of continued employment and promotion as described during the interview process and as outlined in the *Faculty Handbook*.

Offers to part-time faculty are made by department chairpersons or those acting in the capacity of a chair, and concluded by an agreement approved by the appropriate academic dean. A part-time faculty member receives a formal appointment on a semester basis, provided enrollment justifies it at registration time. A part- time faculty member is not eligible for tenure.

Related Policies

- [Promotion of Faculty Members](#)
- [Faculty Status](#)

History

07/01/89 - Reaffirmed with publication of Faculty Manual

02/24/99 - Revised, as recommended to the President by the Policy Committee of the University, to include possibility of opening the fall semester in August.

10/04/02 - Revised to change the reference to the opening date of the academic year, as recommended to the President of the University by the Policy Committee of the University.

03/28/08 - Revised to provide for permanent non-tenured faculty, as recommended to the President of the University by the Policy Committee of the University.

2/18/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University.

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Progressive Discipline



Policy Statement

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired. Its objectives support the collegial relationships at Marywood University and are directed toward continual institutional improvement. Because the University regards disciplinary action as corrective and not punitive, the policy recognizes personal and professional problems that may be rectified by an informal educational process, as well as serious violations of professional responsibilities implicating possible recommendation for suspension or dismissal.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

Procedures

Commencement. Disciplinary action may be initiated by a complaint, oral or written, which alleges violation of institutional policy, practice, procedure or other functions and responsibilities of the faculty member in pursuing his or her customary teaching and institutional role. The complaint, which may reflect an incident or incidents of misconduct or deficiency, may be communicated to the faculty member's immediate supervisor or to the appropriate dean.

Meeting with Administrator. The administrator receiving the complaint shall discuss the matter with the faculty member in a confidential conference. If additional information from the faculty member provides a satisfactory explanation, the decision may be to close the matter then. If, however, additional light is not shed on the allegation or an explanation is not satisfactory, the administrator will specify corrective action to be taken, and the discussion will constitute an oral warning.

Written Warning. If the alleged problem continues or additional complaints are received, the immediate supervisor or dean must notify the Vice President for Academic Affairs, who shall conduct a preliminary investigation concerning the merits of the complaint. A written warning to the faculty member may follow where circumstances indicate that the problem is not resolved. The written warning will become a part of the faculty member's personnel file, but will be expunged after three years if no other written warnings have occurred.

Suspension. The faculty member may be suspended by the Vice President for Academic Affairs at any time during the proceedings involving him or her. Suspension is justified if immediate harm to the faculty member or others is threatened by the person's continuance in the faculty position. Unless in direct violation of the law, any

such suspension should be with pay.

Special Assistance. In those circumstances where it is evident that the faculty member is in need of special professional assistance, the Vice President for Academic Affairs may require in writing any of the following remedial actions:

- counseling and/or another type of treatment program, such as Alcoholics Anonymous or Narcotics Anonymous;
- psychological counseling and/or treatment, including out-patient treatment prescribed by a duly credentialed and qualified professional;
- peer faculty monitoring to assist in resolving work-related performance problems;
- a specified number of periodic conferences with the faculty member's Dean to assist in resolving administrative or institutional problems.

Special professional assistance will be for a specific period of time. Where the assistance necessitates in-patient treatment or time away from teaching, that temporary time-off shall be with pay. During the period of assistance, the faculty member shall communicate weekly or at other intervals specified by the Vice President for Academic Affairs, who shall monitor the faculty member's progress to determine when and if the special assistance has achieved its objective. Part of this monitoring function may involve the faculty member providing summary statements from treatment providers regarding compliance and prognosis. If the faculty member has refused to participate, or the remedial objective has not been reached during the specified period of time, a recommendation to terminate employment may be made to the President of the University.

Dismissal

If remedial actions(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member.

Ad Hoc Faculty Committee

Faculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member.

- Having received a written recommendation for either suspension or dismissal from the Vice President for Academic Affairs, the President of the University sends a written communication to the faculty member, stating with reasonable particularity the basis for suspension or dismissal and offering, if requested by the faculty member within 10 days, to convene a tenured faculty ad hoc committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible.
- Should the faculty member request a review by an ad hoc committee, it shall consist of three members selected in the following order: (a) one tenured faculty member selected by the person seeking assistance, and (2) two tenured faculty members selected by the Executive Council of the Faculty Senate. The choice of members should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The President of the University or his/her delegate has the option of attending the meetings of the Committee. Should a faculty member request that such a committee be convened twice (i.e., once for suspension and once for dismissal), the membership of the committee may be similar or different, a determination which is made by the President of the University in consultation with the faculty member and the Vice President for Academic Affairs. Normally the committee would make its

recommendation within 30 days of being convened.

- The Committee elects its own Chair, who sends the opinion of the committee in writing to the President of the University, copied to the faculty member and to the Vice President for Academic Affairs. If the opinion of the Faculty Committee is that the matter is successfully resolved or that there is no merit to the complaint, a recommendation shall be made to discontinue proceedings. If the problem has not been corrected and reason still exists to question the fitness of the faculty member, the recommendation shall be to either continue a suspension or initiate a formal action toward dismissal.

Publicity. Public statements by the faculty member or others about possible or actual termination of employment should be avoided.

Related Policies

- [Teaching Responsibility](#)
 - [Librarianship Responsibility](#)
 - [Tenure](#)
 - [Faculty Status](#)
 - [Academic Workload](#)
-

History

07/01/89 - Reaffirmed with publication of Faculty Manual

12/12/97 - Addition of informal process approved by the President of the University as recommended by the Policy Committee of the University

07/01/03 - Editorial changes made to reflect academic restructuring

10/12/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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4.2 CIVIL RIGHTS COMPLAINT PROCEDURES

(Revision approved by the President of the University 4/03/00, 7/21/03, 6/24/09)

The following process must be followed any time a member of the Marywood University community believes s/he has been the victim of or witness to discrimination, harassment, or assault by any member of the University community on University property or any property controlled by the University. Any individual who believes s/he has been subject to discrimination on the basis of disability should file a grievance consistent with Marywood's *Disability Grievance Procedures*. Confidentiality is expected of all persons involved in the process.

In furtherance of Marywood University's commitment to its duties and obligations, regular training on harassment, discrimination and related topics is provided for managers and supervisors in the Marywood community.

Internal Process

1. As soon as possible, but not later than 30 working days, except in unusual circumstances, after the alleged incident(s) occurs, the complainant must present the complaint to the appropriate University administrator as listed below:

Claims Against Faculty Members or Librarians

Contact: Academic Dean or Director of Library and/or Provost and Vice President for Academic Affairs

Claims Against Administrators, Professional Staff, or Support Staff Members

Contact: Immediate supervisor and/or a vice president

Claims Against Students

Contact: Dean of Students and/or Vice President for Student Life.

In all cases, individuals may contact the Assistant Vice President for Human Resources and Affirmative Action Officer if they feel they cannot contact the appropriate individual as noted.

In cases that involve two or more categories of Marywood community members, the University administrator first contacted will consult with the President of the University to determine the appropriate course of action.

2. The initial discussion between the complainant and the University administrator will be kept confidential to every extent possible. The University administrator must contact the Assistant Vice President for Human Resources and Affirmative Action Officer in cases involving employees.
3. If the complainant, after an initial meeting with the University administrator, decides to proceed, the complainant submits within 10 working days a formal complaint, preferably in writing, to the appropriate University administrator. The complaint must include detailed factual information concerning the incident(s), and should include what the victim feels will correct the situation.

In certain serious cases the University administrator may proceed even without a formal complaint.

Cases involving alleged discrimination, harassment, and sexual assault are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case is to be limited, so as to insure, as fully as possible, the privacy of the individuals involved.

4. The University administrator must inform both parties of the need for confidentiality. Any individual who retaliates against the complainant will be subject to discipline up to and including discharge from employment and/or termination of student status.
5. Within 5 working days after receipt of a formal complaint, the University administrator must initiate the appropriate steps to effect an informal resolution of the complaint that will be acceptable to both the complainant and the alleged offender.
6. Within 10 working days after the initiation of the steps to effect an informal resolution, the University administrator must provide a written summary of the complaint and the proceedings to date to both the complainant and the alleged offender. Appropriate remedial action will be determined by the University administrator after consultation with executive officer(s) and/or legal counsel if deemed necessary. Action will be taken to eliminate the discriminatory or harassing conduct, including but not limited to warning, suspension, transfer, community service, discipline, discharge, or dismissal of the offender or anyone making a knowingly false complaint. The remedial action may also include offering assistance/training to the victim and/or the offender. The parties will be formally notified of the final decision, including punishment or sanctions, if any.
7. Either party, if not satisfied with the informal resolution proposed by the University administrator, will have 10 working days to file an appeal. Appeals must be in writing and submitted to the President of the University. Within 5 working days, the President will direct the appeal to the appropriate University body, described below. The appeals committee will have 30 working days to review and make a recommendation to the President of the University. The President of the University will provide a written response to the appellant within 10 working days of the receipt of the appeals committee's recommendation. The decision of the President of the University is final and binding internally.

Claims against Faculty Members including Librarians, Administrators, Professional Staff, and Support Staff

The President of the University will appoint and convene a committee of 5 employees comprised of professional staff, administrators and/or faculty who are independent of the claim.

Note: Claims by faculty members against faculty members may choose to contact the Faculty Grievance and Appeals Committee in lieu of this process.

Claims against Students

The President of the University will refer the appeal to the Vice President for Student Life within 5 working days. The Vice President for Student Life will convene an Appeal Board within 3 working days of the President's notification. The Appeal Board will have 30 working days to review and make a recommendation to the Vice President for Student Life. The Vice President will notify the President of the recommendation within 3 working days. The President of the University will provide a written response to the appellant within 10 working days of the receipt of the appeals committee's recommendation. The decision of the President of the University is final and binding internally.

External Process

Victims may choose to file a report with the proper law enforcement authorities. Marywood University has personnel on staff who can explain criminal complaint procedures and assist victims in beginning the process. Police investigation and legal prosecution are conducted outside of and in addition to University procedures.

Resources

A list of Marywood University and community resources is available at the Human Resources Office and the Student Life Offices.

Students are encouraged to use the services of the Counseling and Student Development Center, the Student Health Services Office, and the Students with Disabilities Services Office.

4.3

DISABILITY GRIEVANCE PROCEDURES

(Approved by the President of the University 6/24/09)

Students are strongly encouraged to contact the Office of Student Support Services at the first sign of any difficulties obtaining their approved academic accommodations from faculty, or if they encounter difficulties related to their disabilities from any Marywood University staff, administrators, or students.

It is the policy of Marywood University not to discriminate on the basis of disability. The University has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances by either students or employees alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) or the relevant U.S. Department of Health and Human Services regulations implementing the Act (34 C.F.R. Part 104) (together, "Section 504"). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The Law and Regulations may be examined in the office of the Section 504 Coordinator, Dr. Patricia E. Dunleavy, Assistant Vice President for Human Resources and Affirmative Action Officer, who has been designated to coordinate the efforts of the University to comply with Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for the University to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance. The University will make every effort to protect the grievant from retaliatory action. Any individual who retaliates against the grievant will be subject to discipline up to and including discharge from employment and/or termination of student status.

Procedures

All alleged incidents involving disability discrimination are to be dealt with immediately. When a Marywood University employee or student believes s/he has been the victim of disability discrimination or witnessed disability discrimination, the following procedures should be used:

1. Grievances must be submitted to the Section 504 Coordinator, or her designee, within 30 calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action. (Special circumstances warranting later filings will be considered on a case-by-case basis.) A grievant may contact the Vice President for Enrollment Management if he or she feels he or she cannot contact the Section 504 Coordinator, who will designate an appropriate person to fulfill the Section 504 Coordinator's responsibilities under this policy.
2. A grievance must be in writing and must contain the name, address and other contact information of the grievant, describe the problem or alleged action alleged to be discriminatory in sufficient detail to inform the Section 504 Coordinator of the nature and date of the alleged violation and permit an adequate investigation to be conducted, include the names of University employees or students involved and state the remedy or relief sought.

Faculty Grievances and Appeals



Policy Statement

As an institution of higher education, Marywood University brings together a faculty, administration, and governing board united in a common bond of academic purpose. Essential to the fulfillment of this purpose is a mutual recognition of institutional integrity and individual human rights, along with an understanding of the respective roles of the several entities which constitute this educational organization.

Circumstances may arise at times, however, wherein a grievant--full-time, part-time, or pro-rata--may question decisions which affect his/her professional role in the institution. To assist in the resolution of these matters, a series of guidelines for grievances is herein set forth.

Definitions

Grievance: A grievance refers to any disagreement between two parties. A grievance identifies a complaint one party has against another party for some alleged wrongful action on the part of the second party.

Grievant: A Grievant initiates a grievance.

Types of Issues That Can Be Grieved

It is understood that procedural rather than substantive factors provide appropriate areas of review, and the Faculty Grievance Committee will not attempt to substitute its judgment for that of the decision-maker(s) involved in the case.

Thus, the Faculty Grievance Committee will hear grievances concerning:

- 1) Allegations of violation of academic freedom resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment.
- 2) Allegations of impermissible discrimination. Tenured and non-tenured faculty are protected against illegal or unconstitutional discrimination, or on any basis not relevant to job performance, and includes, but is not limited to, race, sex, religion, national origin, age, disability, marital status, or sexual orientation
- 3) Allegations of inadequate consideration resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment; or termination of employment due to retrenchment.
- 4) Allegations of violations of procedures used in rendering decisions in numbers 1 and 2 above as set forth in Chapter 2 of the *Faculty Handbook*.

Procedures regarding dismissal, suspension, and sanctions of faculty members are in the *Progressive Discipline*

policy.

Should a grievant allege cause for grievance in any matter not identified in the above guidelines, the grievant may consult the Faculty Grievance Committee. In such circumstances, the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

Persons Against Whom Grievances May be Directed

Fundamentally, a grievance may arise from an allegation of improper implementation of a procedure or process leading to a decision. The person(s) or body who perform(s) that procedure or process is (are) the subject(s) of the grievance. Thus, a grievant may direct a grievance against the person(s) or body responsible for the decision identified herein.

The decisions or actions of the Faculty Grievance Committee or Ad Hoc Hearing Committee may not themselves be grieved.

Procedures

Informal Procedure

- 1) A member of the faculty must initially discuss a complaint with the person or body responsible for the action to which the grievant takes exception in order to determine if a resolution is possible.
- 2) A complaint must be presented within (10) calendar days of the occurrence or discovery of the alleged violation.
- 3) No grievance may be filed without the initiation of this informal complaint procedure.
- 4) If the grievance still exists after step one the grievant initiates a consultation with the Vice President for Academic Affairs in order to try to resolve the matter.

Formal Procedure for Filing a Grievance

- 1) The Faculty Grievance Committee is convened.

Faculty Grievance Committee

The Faculty Grievance Committee consisting of three tenured faculty members and two alternates (also tenured) is specifically charged with responsibility for resolving matters of grievance and appeal. The Faculty Senate conducts the election of this committee. Faculty currently serving on the Rank and Tenure Committee or the Faculty Development Committee are not eligible for election to this committee.

The term of each member extends for three years, with one person replaced each year. An alternate will be identified at each election. Any member of the Grievance Committee who has had any prior involvement in a case under consideration must recuse him/herself. The Grievance Committee shall annually elect a chair-elect who will succeed the Chair.

Grievance Process

The grievant may consult the President of Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair. The Chair should be provided with a written statement setting forth, in detail, the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed; this document may also include a proposal for resolving the issue. A grievance must be filed within thirty (30) calendar days of the occurrence or discovery of the alleged violation but not fewer than five (5) calendar days after the initiation of the informal complaint.

In considering the grievance or appeal, the Faculty Grievance Committee will take the following steps:

- 1) The Committee notifies the decision maker(s) that a grievance has been filed.
- 2) The Grievance Committee requests from the grievant written information regarding the issues. The Grievance Committee also requests from the decision maker(s) written statements describing the basis for the decision being appealed or grieved, as well as any attempts to settle the matter informally. This information shall be held in confidence by the Grievance Committee. At this point in the process, the information gathered is solely for review by the Committee and is not to be shared with either party involved.
- 3) At any point, the Grievance Committee may request additional information in writing from the grievant and from the decision-maker(s).
- 4) If after completing the above steps, the Committee determines that the grievance is improper or unsubstantial, or that sufficient time had not yet been allowed for its normal resolution, or that there is no evidence of improper action on the part of the decision maker(s) which would constitute a legitimate grievance, the Committee will communicate this determination to the grievant and the decision maker(s).
- 5) If the Grievance Committee determines that there was inadequate consideration or violation of procedures (see No. 3 and 4 under Types of Issues Which Can Be Grieved above), the Committee will return the case to the decision maker for reconsideration.
- 6) If the grievance is deemed appropriate for mediation, the Chair will appoint a Mediator from the University. The Mediator does not represent either party. Any party may object to the Mediator on the grounds of actual or apparent bias or conflict of interest and submit such objections to the Chair in writing. The Chair will review the objections and may replace the mediator.
- 7) The Offices of the Vice President for Academic Affairs or Human Resources may be consulted by the Mediator on mediation procedure or other matters involved in the grievance.
- 8) The Mediator shall try to resolve the grievance within thirty (30) calendar days of formal submission to the chair. With the consent of both parties, the period of mediation may be extended for a short period of time. If the grievance is not resolved within the thirty (30) calendar days, the mediator will advise the chair of the committee in writing that that the issue has not been resolved. If a mutually accepted agreement is reached, this will be communicated to the chair of the committee.
- 9) Grievances not appropriate for mediation or grievances not resolved through mediation shall be referred to the Ad Hoc Hearing Committee. All evidence collected will be passed on to the Ad Hoc Hearing Committee.
- 10) If the Faculty Grievance Committee recommends a formal hearing, in cases of violation of academic freedom or impermissible discrimination, an Ad Hoc Hearing Committee will be created to conduct a formal

investigation and to arrive at a recommendation for resolving the issue.

11) The Grievance Committee will make a summary report of its activities at the end of each academic year to the Faculty Senate. No details relevant to the privacy of the participants in any cases will be included in this report.

Ad Hoc Hearing Committee

The Ad Hoc Hearing Committee shall consist of three members, selected by the Faculty Senate Executive Council, from a standing committee of fifteen tenured Faculty Members elected for one-year terms by the faculty at large. The Faculty Senate conducts the election of this committee.

Each party shall have two challenges without stated cause regarding membership of the Ad Hoc Hearing Committee. No member of the Ad Hoc Hearing Committee shall have had any prior involvement in the case.

If the three-person Ad Hoc Hearing Committee cannot be chosen from the fifteen members of the standing committee, the Executive Council of the Faculty Senate is empowered to conduct a special election to obtain fifteen additional members with terms of one year.

The Ad Hoc Hearing Committee must select a chairperson.

Ad Hoc Hearing Procedures

- 1) The Ad Hoc Hearing Committee is empowered to gather information and documents specific to the case of the Grievant, conduct interviews, hold a hearing and take actions as are necessary to investigate the grievance to the extent that the law and University policy permit. The Ad Hoc Hearing Committee will provide recommendations in writing forty (40) calendar days from the date of its official appointment.
- 2) All Hearings are closed to anyone other than the parties and their advisors, members of the Ad Hoc Hearing Committee, and any witnesses invited to testify by the Committee. The hearing may be audio or video recorded and a written record will be maintained. The hearing is not a legal proceeding. At the beginning of the hearing, all procedures will be made known to the parties, and all information will be kept confidential.
- 3) Each party to the grievance may have one advisor during the hearing. The advisor may not participate in the hearing.
- 4) Strict rules of legal evidence will not be binding upon the Ad Hoc Hearing Committee and evidence of probative value in defining issues may be admitted.
- 5) The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.
- 6) Upon reaching a decision on the issue and a recommendation for action, the Ad Hoc Hearing Committee will provide a summary written report to the petitioner, the person(s) named in the grievance, and the appropriate administrative officer and the President.
- 7) After receiving the recommendation of the Ad Hoc Hearing Committee, the appropriate administrative officer will review the recommendation and notify the Ad Hoc Hearing Committee and petitioner whether the recommendation has been accepted. If the recommendation of the Ad Hoc Hearing Committee is not

accepted by the appropriate administrative officer, the administrative officer will review it with the Ad Hoc Hearing Committee.

8) No details relevant to the privacy of the participants in the case will be included in the notice from the Hearing Committee. Public statements and publicity about the case by the participants will be avoided until the proceedings have been completed, including consideration by the President

Action by the President of the University

Following the recommendation of the Ad Hoc Hearing Committee, should the petitioner desire further consideration of the issue beyond the immediate administrative channels of the University, the President may be requested, within twenty calendar days, to review the case.

This review will be based on the record from the committee hearing and may provide opportunity for argument, oral or written, or both, by the principals. Then the President will then make the final decision.

Responsibility for Expenses Incurred in Grievance and Appeal

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

Cost of an advisor.

Travel expenses for advisor, witnesses, or others engaged by petitioner.

Cost of preparing any documents and copies thereof.

Withdrawal of a Grievance

The grievance can be withdrawn at any point in the process.

Non-Retaliation

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome.

Grievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

Related Policies

- [Academic Freedom](#)
- [Disability Grievance Procedures](#)
- [Civil Rights Policy](#)
- [Civil Rights Complaint Procedures](#)
- [Sabbatical Leave for Faculty Member](#)
- [Non-reappointment of Faculty Member](#)

- [Promotion of Faculty Members](#)
- [Evaluation of Faculty Members](#)
- [Retrenchment of Faculty](#)
- [Tenure](#)
- [Progressive Discipline](#)

History

10/02/92 - Proposal returned to committee of Faculty Senate by College Committee on Policy

11/13/92 - Proposed policy dated 3/13/92, as amended, recommended by College Committee on Policy to the President

04/26/93 - Presidential approval affirmed with publication of the President's Memo

03/20/98 - Revision proposed by Faculty Senate approved by the President of the University as recommended by the Policy Committee of the University

04/29/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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April 3, 2012

Dr. Frederick F. Fagal, Jr.
17 East Lake Street
Skaneateles, NY 13152

Dear Dr. Fagal,

I have received your letter dated March 29, 2012. You chose to file a grievance under the Marywood University Faculty Grievance and Appeals Policy and chose not to convene an ad hoc committee to review my recommendation as I had offered to you on two occasions. The Faculty Grievance Committee reviewed your grievance and found no evidence of improper action on my part which would constitute a legitimate grievance.

Since the grievance process is now complete, I have decided to finalize my recommendation. As a result, your employment with Marywood and your tenure are terminated effective today, April 3, 2012.

Further, to provide you with a review of my decision, I will consider your letter dated March 29, 2012 as your authorization for me to convene two faculty ad hoc committees to appeal my decisions to suspend you and to terminate your employment and tenure. I am doing this despite the fact that on two separate occasions you refused my offer and did not choose to convene an ad hoc committee to review my decision to suspend you and my recommendation to terminate your employment and tenure before I finalized my decision.

According to the terms of the Progressive Discipline Policy, you must now select a tenured faculty member for the ad hoc committee. Please submit the name of your selection to Sr. Gail Cabral, President of the Faculty Senate, as soon as possible.

Sincerely,

Sister Anne Munley, IHM
President

Exhibit 2

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK F. FAGAL, JR.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 3:14-cv-2404-
v.	:	ARC
	:	
MARYWOOD UNIVERSITY,	:	
	:	
Defendant.	:	
	:	

**DEFENDANT’S ANSWER TO PLAINTIFF’S
AMENDED COMPLAINT AND AFFIRMATIVE AND OTHER DEFENSES**

Defendant Marywood University (“Defendant”), by and through its undersigned counsel, hereby responds to the Amended Complaint of Frederick F. Fagal, Jr. (“Plaintiff”) as follows:

PARTIES

1. Admitted.

2. Admitted in part, denied in part. Defendant admits that Plaintiff is a natural person. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 2 and, thus, they are denied.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and, thus, they are denied.

4. Admitted.

5. Admitted.

6. Admitted.

JURISDICTION AND VENUE

7. The allegations in Paragraph 7 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 7 require a response, they are denied.

8. The allegations in Paragraph 8 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 8 require a response, they are denied.

9. The allegations in Paragraph 9 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 9 require a response, they are denied.

FACTUAL BACKGROUND

10. Admitted in part, denied in part. Defendant admits only that Plaintiff received a document entitled “Agreement and Appointment for Full-Time Faculty,” a partially redacted copy of which is attached to his Amended Complaint. The “Agreement and Appointment for Full-Time Faculty” is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

11. Denied.

12. Admitted.

13. Admitted.

14. Admitted in part, denied in part. Defendant admits only that on July 1, 2010, it issued an edition of its Faculty Handbook. The Faculty Handbook is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

15. Admitted.

16. Admitted in part, denied in part. Defendant admits only that it had a “Contractual Agreements with Faculty Members” policy in May 2011. The policy is a document that speaks for itself and, thus, all characterizations of it are denied.

17. The allegations in Paragraph 17 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 17 require a response, they are denied.

18. Admitted in part, denied in part. Defendant admits only that in November 2011, Plaintiff scheduled a speaker from the Foundation for Individual Rights in Education (“FIRE”) to come to the University in connection with one of Plaintiff’s courses. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 18, and thus they are denied.

19. Admitted in part, denied in part. Defendant admits only that Plaintiff received approval from Defendant to hang posters announcing the speaker from FIRE. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 19 and, thus, they are denied.

20. Admitted in part, denied in part. Defendant admits only that it removed some of Plaintiff's posters announcing the FIRE speaker. The remainder of the allegations in Paragraph 20 are denied.

21. Denied.

22. Denied.

23. Admitted.

24. Admitted. By way of further answer, Plaintiff's January 13, 2012 email to Defendant's faculty contained hyperlinks to vulgar and highly offensive YouTube videos depicting Defendant's personnel as Adolph Hitler and other members of the Nazi regime.

25. Admitted in part, denied in part. Defendant admits only that on January 23, 2012, one of Defendant's deans visited Plaintiff and advised that President Munley was requesting a meeting with him. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 25, and thus they are denied.

26. Admitted in part, denied in part. Defendant admits that on January 23, 2012, President Munley met with Plaintiff regarding whether he posted the YouTube video likening Defendant's faculty to Nazis, and that Plaintiff admitted doing so. Defendant further admits that Plaintiff was suspended immediately and advised to return his keys and identification to Defendant's Human Resources Department. The remainder of the allegations in Paragraph 26 are denied.

27. Admitted.

28. Admitted in part, denied in part. Defendant admits only that it has a "Progressive Discipline" policy, a copy of which is attached to Plaintiff's Amended Complaint. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

29. Denied.

30. Admitted in part, denied in part. Defendant admits that Plaintiff was suspended. Defendant denies that this was a breach of contract and the remainder of the allegations in Paragraph 30.

31. Denied.

32. Admitted in part, denied in part. Defendant admits that on January 24, 2012, President Munley sent Plaintiff a letter recommending Plaintiff be terminated. Defendant denies the remainder of the allegations in Paragraph 32.

33. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on January 24, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

34. Admitted in part, denied in part. Defendant admits only that a portion of the second charge against Plaintiff was inadvertently omitted in President Munley's January 24, 2012 letter. The remainder of the allegations in Paragraph 34 are denied.

35. Admitted in part, denied in part. Defendant admits only that Plaintiff, through his attorney, requested an amended Statement of Charges and that President Munley sent a letter to Plaintiff on February 8, 2012. The remaining allegations in Paragraph 35 are denied.

36. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on February 8, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

37. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on February 8, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

38. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on February 8, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

39. Admitted in part, denied in part. Defendant admits that President Munley included a document entitled “Release of Personal Information” in her February 8, 2012 letter to Plaintiff. The release is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

40. Admitted in part, denied in part. Defendant admits only that it has a “Progressive Discipline” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remainder of the allegations in Paragraph 40 are denied.

41. Admitted in part, denied in part. Defendant admits only that Plaintiff’s suspension began on January 23, 2012. The remainder of the allegations in Paragraph 41 are denied.

42. Admitted in part, denied in part. Defendant admits only that it has a “Civil Rights Complaint Procedures” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus,

all accurate quotations are admitted and all mischaracterizations of it are denied. The remainder of the allegations in Paragraph 42 are denied.

43. The allegations in Paragraph 43 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 43 require a response, they are denied.

44. Admitted in part, denied in part. Defendant admits only that President Munley sent letters to Plaintiff on January 24, 2012 and February 8, 2012. These letters are documents that speak for themselves and, thus, all accurate quotations are admitted and all mischaracterizations of them are denied.

45. Admitted in part, denied in part. Defendant admits only that President Munley sent letters to Plaintiff on January 24, 2012 and February 8, 2012. These letters are documents that speak for themselves and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

46. Admitted in part, denied in part. Defendant admits only that President Munley sent letters to Plaintiff on January 24, 2012 and February 8, 2012. These letters are documents that speak for themselves and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

47. Admitted in part, denied in part. Defendant admits only that it has a “Progressive Discipline” policy, which was in effect at the time of Plaintiff’s

termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

48. Admitted in part, denied in part. Defendant admits only that Plaintiff, through his attorney, communicated with Defendant on February 2, 2012. The communication is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

49. Admitted in part, denied in part. Defendant admits only that its counsel sent a letter to Plaintiff's counsel on February 9, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

50. Denied.

51. Admitted in part, denied in part. Defendant admits only that on February 22, 2012, Plaintiff filed a grievance against President Munley. The remainder of the allegations in Paragraph 51 are denied.

52. Admitted in part, denied in part. Defendant admits only that Plaintiff filed a grievance against President Munley. The grievance is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

53. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and, thus, they are denied.

54. Admitted in part, denied in part. Defendant admits only that on April 3, 2012, President Munley sent a letter to Plaintiff. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

55. Admitted in part, denied in part. Defendant admits only that on April 3, 2012, President Munley sent a letter to Plaintiff. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remaining allegations in Paragraph 55 are denied.

56. Denied.

57. Admitted in part, denied in part. Defendant admits only that it has a “Progressive Discipline” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remaining allegations in Paragraph 57 are denied.

58. Admitted in part, denied in part. Defendant admits only that it has a “Faculty Grievances and Appeals” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remaining allegations in Paragraph 58 are denied.

59. Admitted.

60. Admitted in part, denied in part. Defendant admits only that the Faculty Senate Ad Hoc Hearing Committee issued a document titled “Review of Sister Anne Munley’s Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal.” This review is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

61. Denied.

62. Admitted in part, denied in part. Defendant admits only that it had a “Progressive Discipline” policy, which was in effect at the time the Faculty Senate Ad Hoc Hearing Committee issued its “Review of Sister Anne Munley’s Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal.” The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

63. Denied.

64. Denied.

65. Admitted in part, denied in part. Defendant admits only that on July 13, 2012, President Munley sent Plaintiff a letter. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

66. Admitted.

67. Denied.

COUNT I
Breach of Contract

68. Defendant incorporates by reference its responses to Paragraphs 1-67 as if fully set forth herein.

69. To the extent the allegations contained in Paragraph 69 are legal conclusions, no response is required. The remainder of the allegations in Paragraph 69 are denied.

70. To the extent the allegations contained in Paragraph 70 are legal conclusions, no response is required. The remainder of the allegations in Paragraph 70 are denied.

71. To the extent the allegations contained in Paragraph 71 are legal conclusions, no response is required. The remainder of the allegations in Paragraph 71 are denied.

Defendant denies that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the Amended Complaint.

Defendant denies any allegation not specifically admitted, denied, or referred to on information and belief.

WHEREFORE, Defendant respectfully requests that this Court:

- a. Dismiss the Amended Complaint in its entirety;

b. Deny each and every demand, claim and prayer for relief contained in the Amended Complaint;

c. Award to Defendant reimbursement for reasonable attorneys' fees and costs incurred in defending this meritless and vexatious action; and

d. Grant such other and further relief as the Court may deem just and proper.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

The Amended Complaint fails to state any claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims for damages are barred or reduced by his failure to mitigate his alleged damages by using reasonable diligence to obtain subsequent employment.

THIRD DEFENSE

Defendant acted reasonably and in good faith at all times.

FOURTH DEFENSE

Defendant's Faculty Manual, Faculty Handbook, Policies and Procedures Manual, including all policies therein, and the letter agreements referenced in Plaintiff's Amended Complaint, do not constitute binding, enforceable contracts.

FIFTH DEFENSE

To the extent Defendant and Plaintiff had an enforceable contract related to Plaintiff's employment and/or tenure, Plaintiff materially breached that agreement, Defendant provided notice of such breach, and Defendant was absolved of any obligations thereunder.

SIXTH DEFENSE

Each and every action taken by Defendant with respect to Plaintiff was justified by business necessity.

SEVENTH DEFENSE

The unclean hands doctrine applies and prohibits Plaintiff from judgment in his favor.

EIGHTH DEFENSE

Defendant did not breach any contract with Plaintiff.

NINTH DEFENSE

Defendant followed its applicable policies and procedures with respect to suspending and terminating Plaintiff.

Respectfully submitted,

/s/ - Stephanie Peet

Stephanie J. Peet (PA ID: 91744)

Katharine Thomas Batista (PA ID: 312366)

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ATTORNEYS FOR DEFENDANT

Dated: June 30, 2015

CERTIFICATE OF SERVICE

I, Katharine Thomas Batista, do hereby certify that on the 30th day of June, 2015, I caused a true and correct copy of Defendant's Answer to Plaintiff's Amended Complaint and Affirmative and Other Defenses to be served upon the following individuals by CM/ECF and U.S. First Class Mail:

Jonathan Z. Cohen, Esquire
175 Strafford Avenue
Suite 1 PMB 212
Wayne, PA 19087

JACKSON LEWIS P.C.

/s/ - Katharine Thomas Batista

Katharine Thomas Batista

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ATTORNEYS FOR DEFENDANT

Exhibit 3

EXHIBIT
3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL,	:	NO.
JR.,	:	3:14-cv-02404-ARC
	:	
Plaintiff,	:	
	:	
- VS -	:	
	:	
MARYWOOD UNIVERSITY,	:	
	:	
Defendant.	:	

- - -
June 7, 2016
- - -

Videotape Deposition of
FREDERICK F. FAGAL, JR., taken pursuant to
notice, was held at JACKSON LEWIS, P.C.,
Three Parkway, 1601 Cherry Street, Suite
1350, Philadelphia, Pennsylvania,
commencing at 9:35 a.m. on the above date,
before Edward J. Ruggeri, Registered
Professional Reporter, Certified Court
Reporter and Notary Public.

- - -

MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com

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APPEARANCES:

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 Counsel for the Defendant

ALSO PRESENT:

Patricia Dunleavy
 Chelsea Lynch, Videographer

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THE VIDEOGRAPHER: We are now on the record. My name is Chelsea Lynch. I'm a videographer from Magna Legal Services. This is a video deposition of the United States District Court, Middle District of Pennsylvania.

Today's date is June 7, 2016, and the time is 9:35 a.m. This deposition is being held at 1601 Cherry Street, Suite 1350 in Philadelphia, Pennsylvania, in the matter of Frederick Fagal, Jr., versus Marywood University. The deponent is Frederick Fagal, Jr.

This deposition is being taken on behalf of the defendants, and would all counsel please identify themselves.

MR. COHEN: I'm Jonathan Cohen. I represent Plaintiff, Frederick F. Fagal, Jr.

MS. PEET: Stephanie Peet from Jackson Lewis representing Marywood

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University.

THE VIDEOGRAPHER: The court reporter is Edward Ruggeri who will now swear in the witness.

FREDERICK F. FAGAL, JR., after having been duly sworn by Edward J. Ruggeri, a Notary Public within and for the State of Pennsylvania, was examined and testified as follows:

EXAMINATION

BY MS. PEET:

Q. Good morning, Mr. Fagal.

A. Good morning.

Q. We had met last week at --

A. Yes.

Q. -- Sister Munley's deposition.

Again, my name is Stephanie Peet and it's my pleasure to represent Marywood University with reference to the lawsuit that you have filed against it. We are here today to take your deposition.

3 (Pages 6 to 9)

Page 10

1 Have you ever been deposed
2 before?

3 A. No.

4 Q. Okay.

5 Although you were at Sister
6 Munley's deposition and did have the
7 opportunity to see how it went, I'm still
8 going to just discuss with you very
9 briefly the instructions for this
10 deposition so we make sure we're on the
11 same page.

12 Okay?

13 A. Fine.

14 Q. As you know, we have a court
15 reporter who is here taking down
16 everything that we say at today's
17 deposition. For that reason, we're going
18 to ask that you keep your answers verbal.
19 So while I'll understand the nodding of
20 the head or the shrugging of the
21 shoulders, it won't appear on the record.
22 So your answers today do need to be
23 verbal.

24 Do you understand that?

Page 12

1 question. If you answer the question, I'm
2 going to assume you understood the
3 question I had asked you.

4 Do you understand that?

5 A. Yes, I do.

6 Q. Do you understand that you are
7 under oath and all of your testimony needs
8 to be truthful today?

9 A. Yes.

10 Q. While we're sitting here in a
11 conference room in our offices, we're
12 certainly not in the court, your testimony
13 does have the same full effect as if we
14 were in a court of law.

15 Do you understand that?

16 A. I do understand.

17 Q. Is there any reason today that
18 you wouldn't be able to provide complete
19 and truthful testimony?

20 A. No.

21 Q. Are you on any type of
22 medication or suffering from any sort of
23 impairment that would affect your ability
24 to testify truthfully today?

Page 11

1 A. Yes, I do.

2 Q. For that same reason, please
3 allow me to ask my questions in full
4 before you go ahead and start answering
5 the question, and I will grant you the
6 same courtesy.

7 Do you understand that?

8 A. Yes.

9 Q. If at any point in time I begin
10 to ask another question and you weren't
11 done answering the one I had already
12 asked, please let me know. I'm sure it
13 was just inadvertent and I'll allow you to
14 go ahead and finish answering your
15 question.

16 Okay?

17 A. Okay.

18 Q. If at any point in time today
19 you don't understand a question -- I like
20 to think I ask good questions but I can't
21 promise you all of my questions today will
22 be good ones. So if you don't understand
23 the question that I asked, please let me
24 know and I can do my best to rephrase the

Page 13

1 A. No.

2 Q. Is there anything that would
3 affect your ability to remember events
4 that happened four to five years ago?

5 A. I'll do the best I can but
6 nothing specific to affect that.

7 Q. It's my understanding that
8 other than a small claims court matter
9 that you had in the 1970s, you haven't
10 been involved in any other litigation
11 other than the one presently pending
12 against Marywood; is that correct?

13 A. That's correct.

14 Q. And the one in the 1970s, that
15 was a small claims matter?

16 A. Yes, it was.

17 Q. And you were the plaintiff?

18 A. It might have been my wife
19 involved also.

20 Q. Nonetheless, it was you and/or
21 you and your wife were --

22 A. Correct.

23 Q. -- the plaintiffs; is that
24 correct?

4 (Pages 10 to 13)

Page 14

1 A. Yes.
 2 Q. What was that matter over?
 3 A. It was about the return of a
 4 security deposit from an apartment. We
 5 rented it in Ithaca when I was grad
 6 student at Cornell.
 7 Q. Okay.
 8 And were you successful in that
 9 litigation?
 10 A. No.
 11 Q. What is your date of birth?
 12 A. [REDACTED] 1946.
 13 Q. Where do you currently live?
 14 A. 17 East Lake Street in
 15 Skaneateles, New York.
 16 Q. How long have you lived at that
 17 address?
 18 A. At that address, since November
 19 of 1987.
 20 Q. Does your wife live at that
 21 address with you?
 22 A. Yes.
 23 Q. I see that you look a little
 24 pensive. Are you --

Page 15

1 A. I'm just wondering if it was
 2 November of 1988 on the -- when we moved
 3 into that house.
 4 Q. Okay.
 5 I didn't give you this
 6 instruction earlier, but you did the right
 7 thing. If at any point in time you're not
 8 sure about something --
 9 A. Right.
 10 Q. -- and unless your attorney
 11 says otherwise, no one wants you to guess
 12 today.
 13 A. Right.
 14 Q. So if you are going to be
 15 approximating, or estimating, or guessing,
 16 just let us know that you're doing that.
 17 Okay?
 18 A. Right, uh-huh.
 19 Q. One other instruction I did not
 20 give you but it is kind of important for
 21 you to know. This is not meant to be
 22 torturous. If at any point in time you do
 23 need to have a break, you need to get
 24 water, use the restroom, whatever it is,

Page 16

1 that's perfectly fine. All I ask is that
 2 any question that I've already asked has
 3 been answered.
 4 Okay?
 5 A. Would you repeat that again?
 6 I'm sorry.
 7 Q. Sure.
 8 If you need to take a break,
 9 that's fine. Just let us know you want to
 10 have a break.
 11 A. Right.
 12 Q. And we're going to have breaks
 13 throughout the day, but if you need a
 14 break while we're taking the deposition,
 15 let us know. As long as any question that
 16 I've asked has been answered and there's
 17 no question pending on the table --
 18 A. Yes.
 19 Q. -- we can take a break.
 20 A. I understand.
 21 Q. Okay.
 22 Who lives at this home with
 23 you?
 24 A. My wife, Janet.

Page 17

1 Q. Okay.
 2 Anyone else?
 3 A. No.
 4 Q. Okay.
 5 Do you have any intentions of
 6 moving in the next one to two years?
 7 A. No.
 8 Q. Do you have children?
 9 A. Yes, yes.
 10 Q. How many?
 11 A. One.
 12 Q. And how old is your child?
 13 A. 31.
 14 Q. Is your -- son or daughter?
 15 A. Son.
 16 Q. Is your son financially
 17 dependent on you?
 18 A. No.
 19 Q. Congratulations. That must
 20 feel great. I would like to know that one
 21 day.
 22 What is your -- any e-mail
 23 addresses that you currently use, can you
 24 state those on the record?

5 (Pages 14 to 17)

Page 18

1 A. Yes. fffagal@yahoo.com, that's
2 my main address, and my backup address
3 which I use very seldom is
4 fffagal@gmail.com.

5 Q. To the best of your abilities,
6 how long have you had the Yahoo e-mail
7 address?

8 A. Oh, I'll guess 2001, but that's
9 an estimate.

10 Q. What about the Gmail address?

11 A. That'd be a little later, maybe
12 2002, 2003, but I'm -- that's -- again,
13 that's an estimate.

14 Q. Okay.

15 It's my -- and we're going to
16 talk obviously about -- more about this
17 today, but you worked at Marywood and you
18 had a Marywood e-mail address as well; is
19 that correct?

20 A. There were various addresses,
21 correct.

22 Q. Okay.

23 Other than the Yahoo, the
24 Gmail, and, when you worked at Marywood,

Page 20

1 did you attend any other educational
2 institutions?

3 A. Yes.

4 Q. And what was that?

5 A. I went to Cornell University
6 right after graduating from Union.

7 Q. When did you graduate Union?

8 A. 1968, June.

9 Q. And what was your degree in?

10 A. Economics.

11 Q. You said after you graduated
12 Union, you went to Cornell University; is
13 that correct?

14 A. Correct.

15 Q. Did you receive a degree from
16 Cornell University?

17 A. Yes.

18 Q. And what was your degree?

19 A. The degree I received was a
20 master's of arts in economics.

21 Q. Pardon my ignorance.

22 Is that two separate degrees or
23 is that master's of arts and master's of
24 economics --

Page 19

1 the Marywood e-mail address, have you had
2 any other e-mail addresses in the past
3 five years?

4 A. No.

5 Q. Do you use a cell phone?

6 A. Yes.

7 Q. Okay.

8 And what's your cell phone
9 number?

10 A. Area code 315-406-8063.

11 Q. And how long have you had this
12 number approximately?

13 A. About 15 years.

14 Q. Have you had any other cell
15 phone numbers other than the one you just
16 identified in the past five years?

17 A. No.

18 Q. I assume you graduated college;
19 is that correct?

20 A. I graduated from college, yes.

21 Q. And what college did you go to?

22 A. Union College is Schenectady,
23 New York.

24 Q. After you graduated college,

Page 21

1 A. That's --

2 Q. -- or is that one degree?

3 A. It's master of arts in
4 economics, so it's one degree.

5 Q. And when did you receive your
6 master's degree?

7 A. 1971.

8 Q. Did you continue your education
9 thereafter?

10 A. Yes, I did.

11 Q. And what was that?

12 A. I went to Syracuse University.

13 Q. Did you receive any degrees
14 from Syracuse?

15 A. Yes.

16 Q. And what was that?

17 A. I received a master of arts in
18 education and I received a Ph.D. in social
19 studies education.

20 Q. When did you receive the
21 master's of arts in education from
22 Syracuse?

23 A. That would have been in 1976.

24 Q. Would that have been the same

6 (Pages 18 to 21)

Page 22

1 time you received your Ph.D. in social
2 studies education?

3 A. No.

4 Q. When did you receive that?

5 A. 1981.

6 Q. Other than what we've
7 discussed, have you done any other
8 education --

9 A. Yes.

10 Q. -- following college?

11 A. Yes.

12 Q. Okay.

13 And what's that?

14 A. I would audit, sit in on
15 graduate courses at Syracuse. I also took
16 an electronics course at Cayuga Community
17 College.

18 Q. Did you receive any degrees
19 with your electronics course?

20 A. No.

21 Q. When you said you audited
22 graduate courses at Syracuse, did that
23 come with a degree?

24 A. No. I already had a Ph.D.

Page 24

1 Marywood I did teach for one semester a
2 course in statistics in the math
3 department, an introductory statistics
4 course. That was an emergency basis fill
5 in.

6 Q. Do you feel you'd be qualified
7 to teach an introductory to statistics
8 course today?

9 A. I would need to review. I
10 couldn't start tomorrow.

11 Q. Okay.

12 But if you reviewed, do you
13 feel that that's something that you might
14 be able to do?

15 A. Yes.

16 Q. So we talked about U.S. --
17 introduction to U.S. history, introduction
18 to economics, introduction to statistics.

19 A. Yes.

20 Q. Are there any other subject
21 matters or courses that you believe you're
22 qualified to teach?

23 A. Marywood had a course called
24 introduction to social science.

Page 23

1 Q. When you mean you were auditing
2 the graduate courses, what does that mean?

3 A. I believe I paid -- it was in
4 the 1990s. I was taking some courses.
5 Unix and the Internet was one course. I
6 knew an econometrics professor. I sat in
7 on an econometrics course. I can't
8 remember exactly whether I paid tuition or
9 a low audit fee or whether the professor
10 just let me sit in. I can't remember that
11 exactly.

12 Q. Okay.

13 Other than the degrees that
14 we've already discussed, do you have any
15 other degrees?

16 A. No.

17 Q. Okay.

18 As we sit here today, what
19 types of subjects do you feel that you
20 could be a professor for?

21 A. Teach introductory U.S. history
22 based on my experience at Marywood, and
23 based on my experience at Marywood,
24 introductory economics courses. At

Page 25

1 Q. Do you feel you are qualified
2 to teach that?

3 A. Yes.

4 Q. Okay.

5 Anything else as we sit here?

6 A. No.

7 Q. When did you first contact an
8 attorney regarding this matter?

9 A. Well, I contacted the
10 Foundation for Individual Rights in
11 Education on the day I was suspended, and
12 they do have attorneys working for them
13 but that was not an attorney for me
14 personally.

15 Q. The group that you just
16 mentioned, is that also known as FIRE?

17 A. Yes.

18 Q. For today's deposition, just
19 for ease of communication, can we refer to
20 that group as FIRE?

21 A. Yes.

22 Q. I'm not asking for the
23 communications that you had with the
24 attorneys, but did you speak with any

7 (Pages 22 to 25)

Page 26

1 attorneys at FIRE?

2 A. I can't recall.

3 Q. Okay.

4 When was the first time that
5 you remember speaking to an attorney?

6 A. It was probably Jonathan Cohen
7 within a few days of the suspension.

8 Q. How did you know of Jonathan
9 Cohen?

10 A. FIRE gave me his name as a
11 possible contact.

12 Q. And you believe that would have
13 been within a few days after your
14 suspension of employment?

15 A. Yes.

16 Q. Did FIRE give you any other
17 names besides Mr. Cohen?

18 A. No.

19 - - -

20 (At this time, a document was
21 marked for identification as Exhibit
22 Fagal-1.)

23 - - -

24 THE WITNESS: Let me just

Page 28

1 Q. Can you confirm that all of the
2 information contained herein to the best
3 of your knowledge is accurate and
4 complete?

5 A. To the best of my knowledge,
6 accurate and complete, yes.

7 - - -

8 (At this time, a document was
9 marked for identification as Exhibit
10 Fagal-2.)

11 - - -

12 BY MS. PEET:

13 Q. Mr. Fagal, what has been placed
14 before you is what has been marked as
15 Fagal Exhibit-2. These purport to be
16 objections and answers to Defendant's
17 first set of interrogatories to Plaintiff.

18 Do you see that?

19 A. Yes.

20 Q. Okay.

21 And do you agree that these
22 were served on your behalf in response to
23 interrogatories served upon you by
24 Marywood University?

Page 27

1 think. I don't think FIRE gave me
2 any other names. I don't believe I
3 had to make any choices. I'm sorry.

4 BY MS. PEET:

5 Q. Is it fair to say that you
6 don't recall speaking with any other
7 attorneys besides Mr. Cohen?

8 A. That's correct.

9 Q. Okay.

10 What has been placed before you
11 and marked as Fagal Exhibit-1 purports to
12 be the Amended Complaint that was filed in
13 the United States District Court for the
14 Middle District of Pennsylvania.

15 Do you recognize this?

16 A. Yes.

17 Q. And is this the Amended
18 Complaint that was filed on your behalf
19 against Marywood University?

20 A. Yes.

21 Q. Have you had an opportunity to
22 review this before it was filed with the
23 court?

24 A. Yes.

Page 29

1 A. Yes.

2 Q. Did you assist in providing
3 these answers and objections?

4 A. I did.

5 Q. To the best of your knowledge,
6 is all of the information contained in --
7 herein accurate and complete?

8 A. Yes.

9 Q. If I can draw your attention to
10 what appears to be the third to the last
11 page. The last two pages for whatever
12 reason are blank, at least on my copy. It
13 has oath. Turn to the next page. My
14 apologies. No, the other way. Yes.

15 A. Yes.

16 Q. Do you see the page that says
17 oath?

18 A. I do.

19 Q. And it says I declare under the
20 penalty of perjury that the foregoing is
21 true and correct.

22 Do you see that?

23 A. I do.

24 Q. Is that your signature?

8 (Pages 26 to 29)

Page 30

1 A. Yes, it is.
 2 Q. If you can turn to page 25 of
 3 this document, interrogatory number 11.
 4 Do you see that?
 5 A. I do.
 6 Q. It asks you to identify other
 7 tenured professors who you believe engaged
 8 in similar conduct to you in sending out
 9 an e-mail to faculty containing links to
 10 two satirical videos.
 11 Do you see that?
 12 A. Yes.
 13 Q. And your answer is Laurie
 14 McMillan, Ph.D.
 15 Do you see that?
 16 A. Yes.
 17 Q. What do you believe that
 18 Ms. McMillan did that was similar to what
 19 you did?
 20 A. Well, I was following
 21 controversy on campus last fall via the
 22 local newspaper, the Times Tribune and --
 23 and The Wood Word, and I know that there
 24 was some faculty concern and there was a

Page 31

1 protest by faculty at -- I believe it was
 2 one hundredth anniversary celebration, and
 3 I believe Laurie McMillan was protesting
 4 and carrying a sign in front of a crowd
 5 protesting the president.
 6 Q. Anything else?
 7 A. No.
 8 Q. Okay.
 9 Do you know what was -- if
 10 there were any words on her sign or
 11 pictures?
 12 A. Pardon me.
 13 Q. Do you know if there were any
 14 words or pictures on the sign that you
 15 believe she was carrying?
 16 A. There were words.
 17 Q. Okay.
 18 What were those words?
 19 A. I can't recall.
 20 Q. Do you have any firsthand
 21 knowledge? Were you there?
 22 A. No.
 23 Q. So is it fair to say that all
 24 of the knowledge that you have about the

Page 32

1 McMillan event, for lack of better words,
 2 is based on what you've read in the
 3 newspaper; is that correct?
 4 A. That's correct.
 5 Q. Are you aware if Ms. McMillan
 6 created any satirical videos?
 7 A. Not aware.
 8 Q. Okay.
 9 Are you aware if Ms. McMillan
 10 sent around any e-mails to folks in the
 11 Marywood community talking about Sister
 12 Munley as Hitler?
 13 A. No.
 14 Q. At the protest, did
 15 Ms. McMillan, to your knowledge, equate
 16 Sister Anne Munley with Adolf Hitler?
 17 A. No.
 18 Q. The McMillan incident, that
 19 occurred after your termination of
 20 employment, correct?
 21 A. Correct.
 22 Q. And I believe you said perhaps
 23 last year.
 24 Would that have been 2015?

Page 33

1 A. Yes.
 2 Q. As we sit here today, are you
 3 aware of any tenured professor that
 4 created satirical videos such as the ones
 5 that you've created?
 6 A. No.
 7 Q. When did you first commence
 8 employment with Marywood?
 9 A. I might be wrong on the dates
 10 but while I was working at Wyoming
 11 Seminary in Wilkes-Barre, I taught a
 12 part-time course at Marywood. It might
 13 have been 1985 to '86 or one of those
 14 semesters.
 15 Q. To the best of your knowledge,
 16 what course were you teaching during that
 17 time frame?
 18 A. That would have been an
 19 introduction -- introductory -- pardon me
 20 -- introduction to economics course.
 21 Either -- it would have been either
 22 probably micro or macro.
 23 Q. We discussed earlier about
 24 courses that you believe you're qualified

9 (Pages 30 to 33)

Page 34

1 to teach and we talked about intro to
2 economics being one of them.

3 Do you believe that you'd be
4 qualified to teach both intro to economics
5 micro and macro?

6 A. Yes.

7 Q. After you taught this course in
8 1985, 1986, did you have any other
9 employment relationship with Marywood?

10 A. After I started full-time on a
11 tenure track position.

12 Q. Okay.

13 And when was that?

14 A. 1987 in the fall.

15 Q. Now, when you commenced
16 employment, fall of 1987, you were not a
17 tenured professor at that time; is that
18 correct?

19 A. Correct.

20 Q. But I believe it's your
21 testimony you were on a tenure track?

22 A. Correct.

23 Q. Okay.

24 What does it mean to you to be

Page 36

1 Q. Thank you.

2 Were you in a department?

3 A. Yes.

4 Q. And what department was that?

5 A. The Department of Social
6 Sciences.

7 Q. And how long were you in the
8 Department of Social Sciences?

9 A. During my complete tenure at
10 Marywood.

11 Q. Okay.

12 So until the time of your
13 termination in 2012?

14 A. Correct.

15 Q. At some point in time, did you
16 become a tenured professor?

17 A. Yes, I did.

18 Q. And when did that take place?

19 A. I believe that was September of
20 1994.

21 Q. As a professor at Marywood in
22 the Department of Social Sciences, to whom
23 would you report? Generally, job
24 position. I don't need the name of the

Page 35

1 a tenured professor?

2 A. It means that in a sense you
3 have given up -- I won't say given up.
4 You have a commitment to -- from the
5 university to employ you as long as you
6 have fulfilled whatever requirements exist
7 for that university.

8 Q. Do you believe that the
9 commitment is mutual in that the tenured
10 professor is making commitments to the
11 university as well as the university
12 making commitments to the tenured
13 professor?

14 A. Yes.

15 Q. When you commenced employment
16 with Marywood, fall of 1987, was that a
17 full-time position?

18 A. Yes.

19 Q. Were you in a certain
20 department?

21 A. Let me go back. Full-time
22 position -- usually considered a
23 nine-month academic year, a full-time
24 position.

Page 37

1 person yet.

2 A. The chairperson of the
3 department.

4 Q. Would that also be known as the
5 dean of the department?

6 A. No.

7 Q. Are those two different people,
8 two different positions?

9 A. Yes. There is no dean of the
10 department position.

11 Q. Okay.

12 So the professor reports to the
13 chairperson of the department; is that
14 correct?

15 A. Correct.

16 Q. And who does the -- to your
17 knowledge, the chairperson of the
18 department report to by job position?

19 A. I believe it might have
20 depended on the structure of the college
21 over the time, so that would be -- that
22 answer would have different answers.

23 Q. Okay.

24 When -- from 1987 until 1994,

10 (Pages 34 to 37)

Page 38

1 who was the chairperson of the department?
 2 A. That would have been Jack
 3 Barrett for all those years.
 4 Q. Is he still with the
 5 university, to your knowledge?
 6 A. No.
 7 Q. In 1994 when you became a
 8 tenured professor, was Jack Barrett still
 9 the chairperson of the department?
 10 A. Yes.
 11 Q. Do you remember when Jack
 12 Barrett no longer was the chairperson of
 13 the department?
 14 A. I can't recall the exact date.
 15 Q. Who was the next chairperson?
 16 A. I believe it was Kathleen
 17 Munley.
 18 Q. To your knowledge, is there any
 19 relation between Kathleen Munley and
 20 Sister Anne Munley?
 21 A. No.
 22 Q. Do you know the time period in
 23 which Kathleen Munley served as the
 24 chairperson of the Department of Social

Page 39

1 Sciences?
 2 A. Not the exact dates.
 3 Q. After Kathleen Munley, who was
 4 the chairperson?
 5 A. I believe it was Sister
 6 Margaret Gannon.
 7 Q. Do you recall the dates that
 8 she served as the chairperson of the
 9 department?
 10 A. No.
 11 Q. At some point in time, was
 12 there a different chairperson after Sister
 13 Margaret Gannon?
 14 A. After I left, there was.
 15 Q. Okay.
 16 And who was that?
 17 A. I -- Alexander Vari.
 18 Q. At the time of your termination
 19 in 2012, was Sister Margaret Gannon the
 20 chairperson of the social sciences
 21 department?
 22 A. Yes.
 23 Q. Does the name Michael Foley
 24 ring -- familiar to you?

Page 40

1 A. Yes.
 2 Q. Was he employed at Marywood at
 3 the time of your termination?
 4 A. Yes.
 5 Q. What was his position, to the
 6 best of your knowledge?
 7 A. I believe his title is dean of
 8 liberal arts college.
 9 Q. From an organizational
 10 structure at the time of your termination
 11 -- so I'm focussing on 2012.
 12 As a tenured professor, is it
 13 fair to say that you reported to Sister
 14 Margaret Gannon?
 15 A. Yes.
 16 Q. Did Sister Margaret Gannon
 17 report to Michael Foley, the dean of
 18 liberal arts?
 19 A. I presume she did.
 20 Q. Do you know how long Michael
 21 Foley was in that position?
 22 A. No.
 23 Q. Can you approximate?
 24 A. Six years perhaps.

Page 41

1 Q. So at least since 2010?
 2 A. Yes.
 3 Q. Okay.
 4 A. Excuse me. When I said six
 5 years, I meant six years prior to 2012.
 6 Q. Okay.
 7 So we're talking maybe
 8 2006-ish?
 9 A. Maybe 2006-ish.
 10 Q. Ish.
 11 To the best of your
 12 knowledge -- again, I'm just focussing,
 13 trying to get an organizational picture.
 14 So Dr. Fagal reports to Sister
 15 Margaret Gannon at the time of your
 16 termination, Sister Margaret Gannon
 17 reports to Dr. Foley.
 18 Who does Dr. Foley report to?
 19 A. I don't know.
 20 Q. Okay.
 21 Who is the ultimate boss, for
 22 lack of better words, at the university?
 23 A. I presume it would be Sister
 24 Anne Munley.

11 (Pages 38 to 41)

Page 42

Page 44

1 Q. The president of the
2 university?

3 A. The president of the
4 university.

5 Q. So if someone doesn't have a
6 direct dotted -- direct line reporting to
7 the president of the university, everyone
8 that works at the university ultimately
9 reports to the president of the
10 university; is that correct?

11 A. Yes, indirectly.

12 Q. Is there anyone higher on the
13 food chain than the president of the
14 university at Marywood?

15 A. I'm not sure.

16 Q. Can you identify anyone that's
17 higher up than Sister Anne Munley who was
18 president of the university at the time of
19 your termination as we sit here today?

20 A. As a title, I might presume the
21 president of the Sisters of the Immaculate
22 Heart of Mary but I don't really know.

23 Q. Okay.

24 So as far as you know, Sister

1 Q. And to the best of your
2 knowledge, the terms and conditions that
3 are set forth in this letter, are they
4 accurate?

5 A. Well, let me read the letter.

6 Q. Take your time.

7 ---

8 (At this time, the witness
9 complies with request.)

10 ---

11 THE WITNESS: Okay.

12 Could you repeat the question,
13 please?

14 BY MS. PEET:

15 Q. I sure can.

16 The -- as you can see that this
17 Letter of Agreement sets forth some of the
18 terms.

19 Do you see that?

20 A. Yes.

21 Q. To the best of your knowledge,
22 are these terms accurate?

23 A. Yes.

24 Q. Okay.

Page 43

Page 45

1 Munley, the president of the university,
2 was the boss of the university?

3 A. As far as I know, yes.

4 ---

5 (At this time, a document was
6 marked for identification as Exhibit
7 Fagal-3.)

8 ---

9 BY MS. PEET:

10 Q. Mr. Fagal, what has been placed
11 before you marked as Fagal Exhibit-3 is a
12 Letter of Agreement between you and
13 Marywood University dated May 10, 2011.

14 Do you see that?

15 A. Yes.

16 Q. And if you look at the bottom
17 right of this page, it has signature.

18 Is that your signature?

19 A. Yes.

20 Q. And by signing this letter,
21 were you accepting the agreement -- the
22 tenured faculty agreement between you and
23 Marywood University?

24 A. Yes.

1 We discussed earlier about an
2 incident involving Laurie McMillan.

3 To your knowledge, was she
4 disciplined by Marywood University?

5 A. No.

6 Q. Do you know one way or the
7 other?

8 A. No.

9 Q. I just -- sometimes a question
10 can evoke a "no", but I'm not sure if it's
11 no, you don't know or no, she wasn't.

12 A. I do not know if she was
13 disciplined or not disciplined.

14 Q. And that's going to happen
15 throughout the deposition. I'll try
16 and --

17 A. I understand.

18 Q. -- make sure we catch those
19 situations.

20 To your knowledge, did Marywood
21 University have missions and core values?

22 A. Yes.

23 Q. Okay.

24 Off the top of your head, do

12 (Pages 42 to 45)

Page 46

1 you know what those core values are?

2 A. Well, I know one that they were
3 stressing recently was respect for the
4 individual. Another one was I believe
5 something about stewardship of the earth.
6 I'm a little vague on that one. That's
7 what I can surely recall at the moment.

8 Q. Is Marywood University's
9 mission and core values -- is that written
10 down somewhere?

11 A. Yes.

12 Q. Is that made available to you
13 as -- was it made available to you as a
14 tenured professor?

15 A. Yes.

16 Q. Were the mission and core
17 values posted anywhere around the
18 university?

19 A. I can't recall.

20 Q. Okay.

21 And does that mean you can't
22 recall one way or the other?

23 A. I can't recall one way or the
24 other whether there was a posting or not.

Page 48

1 MS. PEET: Well, if you look at
2 paragraph 14 of his Complaint, he
3 talks about on July 1, 2010, Marywood
4 issued an edition of its faculty
5 handbook, and then you attach the
6 first four pages as Exhibit-B to your
7 Complaint -- your Amended Complaint.
8 Pardon me.

9 BY MS. PEET:

10 Q. Is the handbook that I've just
11 put before you the July 1, 2010, handbook
12 that you were referencing in your Amended
13 Complaint?

14 A. I don't know. I'm assuming
15 that this is it though one would have to
16 run a, you know, computer -- check some
17 test to test whether any secret changes
18 had been put in. Do I think that any have
19 been put in? No, I don't, but I cannot
20 testify as to whether this is in fact it.

21 Q. Okay.

22 The July 1, 2010, handbook that
23 you reference in your Amended Complaint
24 and what I purport is in front of you as

Page 47

1 Q. Did you ever hear anyone at the
2 university discuss the missions or core
3 values?

4 A. Yes.

5 - - -

6 (At this time, a document was
7 marked for identification as Exhibit
8 Fagal-4.)

9 - - -

10 BY MS. PEET:

11 Q. Now, Dr. Fagal, I put before
12 you a rather sizable document. The good
13 news is I'm not asking any questions about
14 it specifically or really asking you to go
15 through it with a fine-tooth comb. All
16 I'm going to ask you to do is to identify
17 that this is the handbook that was in
18 existence at the time of your termination
19 of employment. As you can see, the
20 handbook is dated July 1, 2010.

21 MR. COHEN: I'm going to have
22 to object. There's no way he can
23 know whether it's the same handbook.
24 This is like 200 pages.

Page 49

1 Exhibit-4, do you have any reason to
2 dispute that it applied to you as a
3 tenured professor at Marywood?

4 A. No.

5 Q. So is it fair to say that as a
6 tenured professor at Marywood, you had to
7 comply with the policies and procedures
8 contained in the handbook?

9 MR. COHEN: Objection, legal
10 conclusion. You can answer.

11 THE WITNESS: To the extent
12 that they were clear and not vague,
13 yes.

14 BY MS. PEET:

15 Q. Are there any policies that you
16 sought clarification because you believed
17 they were vague?

18 A. When?

19 Q. During your employment.

20 A. Yes.

21 Q. Okay.

22 And what policies do you
23 believe that you sought clarification
24 because they were vague?

13 (Pages 46 to 49)

Page 50

1 A. I remember asking Dean Torell
2 some questions about what was okay or not
3 okay to do.

4 Q. You asked Dean Torell what was
5 okay and not okay with reference to what?

6 A. About postings on my office
7 door, news stories and things like that.

8 Q. Other than asking Dean Torell
9 about what you can and cannot do with
10 postings on your office door, any other
11 policies that you thought were vague for
12 which you sought clarification?

13 A. No.

14 Q. Okay.

15 Did Dean Torell provide a
16 response to you --

17 A. No.

18 Q. -- about what you can or cannot
19 do with postings on your office door?

20 A. He did not reply.

21 Q. When you say he did not reply,
22 is it fair to say that you sent him an
23 e-mail?

24 A. Yes.

Page 51

1 Q. Did you follow up with Dean
2 Torell to nudge him to respond?

3 A. No.

4 Q. Did you seek clarification from
5 anyone else at Marywood other than Dean
6 Torell on this issue?

7 A. I can't recall.

8 Q. To the best of your
9 recollection, other than e-mailing Dean
10 Torell once, did you reach out to Dean
11 Torell in any other way to seek
12 clarification on this issue?

13 A. I can't recall.

14 Q. November of 2011, it's my
15 understanding that you invited a speaker
16 from FIRE to speak at the campus; is that
17 correct?

18 A. I invited a speaker to come to
19 my class which is held on campus, so yes.

20 Q. And what class was that at the
21 time?

22 A. Introduction to social science.

23 Q. Was this the first time you
24 ever had a FIRE speaker speak on your

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1 behalf either in a course or at the
2 university generally?

3 A. No.

4 Q. Can you identify the other
5 times in which you had a FIRE speaker come
6 to the university?

7 A. Yes. Luke Sheehan came to
8 speak on campus at an evening event, and I
9 believe that might have been in 2007 plus
10 or minus a year.

11 Q. Anyone else?

12 A. Do you mean anyone else from
13 FIRE?

14 Q. Correct.

15 A. No.

16 Q. What was your role in getting
17 Luke Sheehan to speak at Marywood?

18 A. I'm not sure what you mean by
19 role.

20 Q. Sure.

21 Did you initiate the -- Luke
22 Sheehan to speak at Marywood?

23 A. Luke. I'm sorry. Good. Luke
24 Sheehan. I was thinking of -- I can't

Page 53

1 recall who initiated it.

2 Q. Is it possible it was you?

3 A. It's possible it was me.

4 Q. What was Mr. Sheehan's what did
5 he speak about at Marywood?

6 A. Something to do with free
7 speech on college campuses around the
8 United States.

9 Q. Did Mr. Sheehan in fact speak
10 at Marywood University?

11 A. Yes, he did.

12 Q. To the best of your
13 recollection, were posters hung with
14 reference to Mr. Sheehan's speaking
15 engagement?

16 A. I can't recall exactly. Could
17 have happened.

18 Q. Do you know if there was an
19 attendance prize for attending the --
20 Mr. Sheehan's speaking engagement?

21 A. There was no dollar attendance
22 prize but we might have given food away,
23 but I really can't recall the details.

24 Q. Did anyone, to your knowledge,

14 (Pages 50 to 53)

Page 54

1 tear down any posters with reference to
2 the Mr. Sheehan speaking engagement?

3 A. No.

4 Q. In 2007, was Sister Anne Munley
5 the president of the university?

6 A. I can't recall but I think so.

7 Q. Did anyone at Marywood
8 University ask you to not have Mr. Sheehan
9 speak at the university?

10 A. No.

11 Q. Did you have any issues or
12 run-ins with anyone at Marywood
13 administration about the Mr. Sheehan
14 speaking engagement?

15 A. No.

16 Q. I believe I asked you if you
17 were aware if any posters were torn down
18 by Marywood administration with reference
19 to Mr. Sheehan, and I believe it was your
20 testimony that you don't know; is that
21 correct?

22 A. My testimony is I don't know.
23 I can't recall if there were posters, and
24 if I can't recall there were posters, I

Page 55

1 certainly can't recall if any were torn
2 down or not.

3 Q. Okay.

4 The -- when Mr. Sheehan spoke
5 at the university, was it in connection
6 with any course or class you were
7 teaching?

8 A. No.

9 Q. Did anyone besides you help
10 initiate and plan this speaking
11 engagement?

12 A. Well, I was an advisor to the
13 Republican Club, and so there were
14 students involved with planning the event.

15 Q. Is it fair to say that
16 Mr. Sheehan, who was a speaker from the
17 FIRE organization, came to Marywood
18 University, at least as part of your
19 initiation in 2007, spoke without issue?

20 A. Mr. Sheehan spoke without
21 issue.

22 Q. And he's connected with FIRE;
23 is that correct?

24 A. At the time, he was.

Page 56

1 Q. So back to November of 2011,
2 who was the speaker that you brought from
3 FIRE to your course?

4 A. Will Creeley.

5 Q. And what did Mr. Creeley speak
6 about?

7 A. I believe he had a stock speech
8 and he had four different titles for it.
9 I believe it was pretty much the same but
10 he would speak about free speech on
11 college campuses and maybe thought control
12 or -- that might have been in the title.

13 Q. So what Mr. Creeley spoke about
14 was similar to what Mr. Sheehan had spoken
15 about in 2007?

16 A. Yes.

17 Q. With Mr. Sheehan, did anyone at
18 the university tell you you could not hang
19 up posters?

20 A. No.

21 Q. Other than you initiating, are
22 you aware of any other speaker from FIRE
23 that spoke at the university?

24 A. I can't recall.

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1 Q. To your knowledge, is Marywood
2 University a public or private university?

3 A. Officially a private university
4 but it does get public funds, of course.

5 Q. Did you tell anyone at the
6 university that you wanted Will Creeley to
7 come speak?

8 A. Yes.

9 Q. Who did you tell?

10 A. Well, I discussed with Sister
11 Margaret Gannon having a speaker from
12 FIRE. At what point the name Will Creeley
13 emerged I'm not exactly sure, but I'm sure
14 it would have come out before the event
15 took place. I contacted -- Sister
16 Margaret told me that there was no money
17 and she gave me a name, cultural affairs
18 person. I'm drawing a blank on the name
19 now, but she said go and ask them if they
20 have any money for speakers. When the
21 plans were made with FIRE, I contacted
22 Carl Oliveri and told him who was coming.
23 I can't recall any more right now.

24 Q. When you told Sister Margaret

15 (Pages 54 to 57)

Page 58

1 that you were -- you wanted to have a
2 speaker from FIRE come, what was her
3 response?

4 A. I believe she -- I said
5 something -- she might have said well,
6 that ties into the course, right, and I
7 said yes, it's -- you know, it has to do
8 with the first amendment in the
9 Constitution. It was very -- we were very
10 low key.

11 Q. Did -- I assume she didn't tell
12 you no, that's not possible, that can't
13 happen, or we object?

14 A. No objections on her part.

15 Q. When she told you that she
16 didn't believe there were money for
17 speakers, was it there was -- to your
18 knowledge, was it we don't have money for
19 speakers from FIRE or we don't have money
20 for speakers generally?

21 A. It was a question of
22 departmental budget, no more money for
23 speakers generally.

24 Q. How much did FIRE want in terms

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1 determine whether there was money in the
2 budget for a speaker?

3 A. I can't recall if I e-mailed
4 her directly or if there was another name
5 I e-mailed, too, but I did contact that
6 higher level.

7 Q. And what was the response, to
8 the best of your memory?

9 A. I know I was told by someone
10 there was no money there either.

11 Q. Okay.

12 And did you believe that to be
13 no money in the budget for speakers
14 generally or did you attribute that to the
15 fact that the speaker was from FIRE?

16 A. I believe it was no money
17 generally.

18 Q. Was the FIRE speaker something
19 that was required by Marywood on you to
20 have at the university?

21 A. No.

22 Q. Did you decide to proceed
23 anyway knowing that Marywood wasn't going
24 to be able to fund a speaker?

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1 of money for a speaking engagement?

2 A. A thousand dollars was the
3 usual fee.

4 Q. I believe you testified that
5 Sister Margaret Gannon suggested that you
6 talk to someone from the cultural
7 department about seeking funds for the --

8 A. Not a cultural department,
9 cultural affairs. Cerda might have been
10 the name, C-E-R-D-A. That name rings a
11 bell but I'm not sure.

12 Q. Is Cerda affiliated with
13 Marywood University?

14 A. She was if that was -- it was
15 just an e-mail contact.

16 Q. Did you indeed contact Cerda to
17 determine whether --

18 A. Yes.

19 Q. -- there was money for this
20 speaking --

21 A. I did go --

22 Q. -- engagement?

23 A. I'm sorry. Go ahead.

24 Q. Did you indeed contact Cerda to

Page 61

1 A. Yes.

2 Q. Was that a voluntary choice
3 that you made?

4 A. Yes.

5 Q. You said you spoke to Carl
6 Oliveri.

7 Who is Carl?

8 A. He was the director of what I
9 think was called the student activities --
10 SAL -- I called it student activities.

11 Q. Can we call it student
12 activities for the purpose of this
13 deposition?

14 A. That would be helpful.

15 Q. Okay.

16 What did you and Mr. Oliveri
17 speak about with reference to you wanting
18 to have a FIRE speaker?

19 A. I wanted to hang -- get some
20 posters to try to draw a crowd because I
21 wanted to open the presentation, open the
22 class to other Marywood students, and I
23 wasn't sure. I never hung posters as a
24 faculty member before for my class or

16 (Pages 58 to 61)

Page 62

1 anything like that, so I wasn't sure of
2 the protocol.

3 I did know that students groups
4 had to get permission to hang posters
5 because I would see posters around and I
6 would see them stamped approved by student
7 life, or student activities, or whatever
8 the stamp was. So I figured it couldn't
9 do any harm to get the posters stamped by
10 student activities.

11 Q. And is that why you went to
12 Mr. Oliveri?

13 A. That's why I went to
14 Mr. Oliveri, and I thought that maybe
15 because it was -- I was trying to reach
16 out to the broad student body that perhaps
17 he would be able to print a few posters
18 for me and I was going to print some
19 others on my own.

20 Q. What was Mr. Oliveri's
21 response?

22 A. He said okay. He said he could
23 print -- I believe it was 12 to 15
24 posters.

Page 63

1 Q. Did he say that there would be
2 a fee associated with the printing of
3 those 12 to 15 posters?

4 A. No.

5 Q. So to your understanding, for
6 him to print those 12 to 15 posters, you
7 would not be responsible for paying
8 anything; is that correct?

9 A. That's correct.

10 Q. And did you want to print more
11 posters than what Mr. Oliveri was able to
12 print?

13 A. Yes.

14 Q. And did you in fact print more
15 posters?

16 A. Yes.

17 Q. Was that something you
18 voluntarily chose to do?

19 A. Yes.

20 Q. And how many more posters did
21 you print?

22 A. I believe the number was 46.

23 Q. Where did you print these
24 posters?

Page 64

1 A. I had the UPS Store in
2 Skaneateles print the posters.

3 Q. The posters that you printed,
4 were they the same posters that Carl was
5 printing as well?

6 A. Yes. Let me clarify. FIRE --
7 this is Thanksgiving weekend. FIRE had
8 sent the sample poster announcing the
9 speech, and the title, and the date, and
10 the time and place, and Carl Oliveri said
11 that was fine.

12 Then -- this is before the
13 weekend of Thanksgiving weekend. Then
14 Carl Oliveri noticed that the posters did
15 not have contact information on them. The
16 PDF sample that FIRE had sent to me that I
17 sent to Carl, no contact information.
18 Carl Oliveri told me, Fred -- he says you
19 need to have contact information on them,
20 an e-mail address would do. You could
21 even handwrite it on because Carl knew
22 that I was bringing posters.

23 And so at that point I said
24 okay, the posters have to be modified.

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1 This is maybe Friday and Saturday of
2 Thanksgiving weekend, and so I sent to
3 Carl Oliveri an e-mail saying, Carl,
4 here's a sample strip that's going to be
5 attached to each poster, and on that strip
6 is my e-mail address, fagal@marywood.edu,
7 for the contact information and also on
8 the poster was a notice for the \$50.00
9 attendance prize drawing for a student who
10 came to the event. And I said that those
11 would all be attached to the posters that
12 would be delivered for stamping first
13 thing on Monday morning, and that was in
14 an e-mail.

15 Q. What was Carl's response?

16 A. I don't believe I got an e-mail
17 response from him that weekend.

18 Q. Did you go back to Carl Monday
19 morning with the posters with the strips
20 on it for approval?

21 A. No.

22 Q. Why not?

23 A. Because a student brought the
24 posters over with the strips attached.

17 (Pages 62 to 65)

Page 66

1 Q. Who was that student?
 2 A. Geri Smith and I believe
 3 Samantha Cocoa was with her, and Ben
 4 Harrington might have been with them also.
 5 I'm not sure about him.
 6 Q. Are they all students?
 7 A. They were all students at the
 8 time.
 9 Q. Okay.
 10 To your knowledge, Geri Smith
 11 and perhaps others went to Carl on Monday
 12 morning with the posters which included
 13 the strip that was to be added to the
 14 poster for approval?
 15 A. No.
 16 Q. Okay.
 17 What am I missing?
 18 A. When Geri Smith brought the
 19 posters over, Carl -- she -- I was not
 20 there. This is what she -- Carl Oliveri
 21 was not there. In charge was a woman who
 22 worked for the student activities office
 23 and she is the one who stamped all of
 24 those posters with the approval, and all

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1 of those posters had on them the prize
 2 announcement and the contact information.
 3 Q. And you don't know who that
 4 woman is?
 5 A. I believe her name is Katie
 6 Aunchman but I do not know her.
 7 Q. Do you know what her job
 8 position is with Marywood?
 9 A. I believe she was a graduate
 10 student. I think she was -- I'm not sure
 11 of her title. I was told it was advisor.
 12 She worked for the clubs or something.
 13 I'm not sure exactly what she worked for
 14 at Marywood, but she worked for Marywood.
 15 Q. Okay.
 16 Do you know one way or the
 17 other whether she had approval to stamp
 18 posters?
 19 A. I do not know.
 20 Q. And this information about Carl
 21 not being there and Katie putting the
 22 stamp of approval on it, you don't have
 23 firsthand knowledge of that; is that
 24 correct?

Page 68

1 A. I do not.
 2 Q. And this is information that
 3 was told to you by Geri Smith, a student,
 4 correct?
 5 A. Yes.
 6 Q. Okay.
 7 A. I do know that posters were
 8 stamped because Geri Smith brought back
 9 some posters to give to me to hang up and
 10 all of them were stamped.
 11 Q. The posters that were stamped,
 12 did they have the strip -- the additional
 13 strip that we've just discussed on the
 14 posters before they were stamped?
 15 A. Yes, they did. The strip was
 16 on the posters before they were stamped.
 17 Q. Did you see the posters with
 18 the strips on them before they were
 19 stamped?
 20 A. Yes. I made the posters. I
 21 taped all the strips on myself.
 22 Q. And before you taped the strips
 23 on, were those posters stamped?
 24 A. No.

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1 Q. Did -- I believe you testified
 2 -- and I'm sorry to be repetitive -- that
 3 Sister Margaret Gannon did not tell you
 4 that the FIRE speaker couldn't come to the
 5 university, correct?
 6 A. She did not tell me the FIRE
 7 speaker could not come to the university.
 8 Q. What about Carl Oliveri?
 9 A. He didn't tell me anything
 10 about the speaker.
 11 Q. Okay.
 12 You said the speaker was slated
 13 for Thanksgiving weekend; is that correct?
 14 A. Well, the speaker was slated
 15 for November 30th, which was a Wednesday
 16 after Thanksgiving weekend.
 17 Q. Was the university in session
 18 at that time?
 19 A. Yes. November 30th the
 20 university was in session.
 21 Q. Who picked the date for the
 22 speaker?
 23 A. Dr. Jackson and I were the
 24 co-teachers for the course and we chose

18 (Pages 66 to 69)

Page 70

1 the date. It was getting near the end of
2 the semester and that was the most obvious
3 date.

4 Q. Was this speaking engagement a
5 required element of the course you were
6 teaching?

7 A. Yes, in the sense that it was
8 held during the class time and it was a
9 speaker during the class.

10 Q. Was it held in the classroom
11 itself?

12 A. No.

13 Q. Okay.

14 Where was it held?

15 A. Comerford Auditorium.

16 Q. And who selected the location?

17 A. I did.

18 Q. Did anyone at the university
19 make any objection to holding the speaking
20 engagement in the auditorium?

21 A. No.

22 Q. You said Dr. Jackson; is that
23 Dr. Thomas Jackson?

24 A. Yes.

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1 Q. One class with the same
2 students?

3 A. Correct.

4 Q. What were Dr. Jackson's
5 thoughts on having this FIRE speaker come
6 to campus?

7 A. We didn't have any big
8 discussion. He thought it was a good
9 idea.

10 Q. Okay.

11 Is it fair to say it was your
12 idea and he supported it?

13 A. Yes.

14 Q. Did Dr. Jackson have an opinion
15 about the posters?

16 A. I don't understand the
17 question.

18 Q. Sure.

19 Did he have an opinion one way
20 or the other about posting posters on the
21 university for the speaking engagement?

22 A. I don't recall any opinion.

23 Q. Did Dr. Jackson participate in
24 making the posters?

Page 71

1 Q. To your knowledge, is he
2 currently a tenured professor at Marywood
3 University?

4 A. Yes.

5 Q. You said he was a co-teacher of
6 the course.

7 What did you mean by that?

8 A. We split the duties and the
9 time.

10 Q. Do you and Dr. Jackson get up
11 in front of the course and would you speak
12 together?

13 A. Generally not.

14 Q. Okay.

15 So would it be some days
16 Dr. Fagal would show up and teach the
17 class and some days --

18 A. Yes.

19 Q. -- Dr. Jackson would show up
20 and teach the class?

21 A. Yes, sorry.

22 Q. But it was one class with the
23 same students; is that correct?

24 A. Will you repeat? Was what?

Page 73

1 A. No.

2 Q. Did Dr. Jackson participate in
3 hanging the posters?

4 A. No.

5 Q. Was he at all involved in the
6 poster incident, for lack of better words?

7 A. No.

8 Q. When, to your knowledge, in
9 relation to the November 30th speaking
10 engagement were the posters hung?

11 A. The posters were hung the
12 morning of November 28th and a few were
13 hung early in the afternoon of November
14 28th.

15 Q. So prior to November 28, 2011,
16 there were no posters hung for this event;
17 is that correct?

18 A. That is correct.

19 Q. And these posters were hung on
20 November 28th for a speaking engagement
21 that was occurring on November 30th; is
22 that correct?

23 A. Yes.

24 Q. Who hung the posters?

19 (Pages 70 to 73)

Page 74

1 A. Geri Smith hung most of the
2 posters. Samantha Cocoa told me in an
3 e-mail that she hung some posters. I
4 don't know how many. And I hung some
5 posters.

6 Q. How many posters were hung
7 approximately generally?

8 A. I'd say 46.

9 Q. Now, you testified earlier that
10 you made 46 posters and Carl said he would
11 give you 12 to 15 posters?

12 A. Correct.

13 Q. Did Mr. Oliveri not give you
14 his 12 to 15 posters?

15 A. I was not there. Geri Smith
16 reported to me in an e-mail that -- she
17 said there were 12 or 15 posters -- I
18 forget the exact number -- that were not
19 stamped, but that of course makes sense
20 because those posters Mr. Oliveri had
21 printed out and they were the plain PDF
22 posters as we see from FIRE without any
23 contact information. So he printed
24 posters without contact information and I

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1 guess I forgot.

2 I did not provide any strips --
3 contact or prize information strips
4 combined to hang on those posters. So,
5 therefore, if the person in student
6 activities saw that there were posters but
7 the posters did not have contact
8 information on them, then she would
9 understandably not stamp them approved.

10 Q. Is it fair to say that Carl
11 told you that in order for them to be
12 approved, they needed to have contact
13 information on them, correct?

14 A. That is correct.

15 Q. And is it also fair to say that
16 you were the one that needed to provide
17 the contact information to Carl, correct,
18 or someone on your behalf?

19 A. Yeah. If I was bringing
20 posters to get approved, it had to have
21 contact information, and Carl said that I
22 could actually write it on if I wanted to.

23 Q. Okay.

24 But that was your

Page 76

1 responsibility, correct?

2 A. Yes.

3 Q. And is it fair to say that, for
4 whatever reason, whether you forgot or
5 whatever, you did not provide that
6 information to Carl either by a strip or
7 you didn't write on your contact
8 information on those 12 to 15 posters you
9 asked him to print out?

10 A. No.

11 Could you repeat the question?

12 Q. Sure.

13 So we've already set forth that
14 Carl told you in order for them to get
15 approved, they had to have contact
16 information on them, correct?

17 A. Correct.

18 Q. We've already, I believe,
19 solidified that Carl told you that you
20 needed to provide the contact information.

21 You could have done it by
22 strip, you could have written something
23 on, but that you had to do it, correct?

24 A. He did not say that.

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1 Q. Okay.

2 A. We did not have any discussion
3 about whether I would like him to put
4 contact information on the strips. I did
5 send him the sample of the strips with the
6 prize announcement and my e-mail address
7 and I said this is what would be on the
8 posters that I brought in on Monday. If
9 Carl had chosen to print out those strips
10 himself, he could have easily done so and
11 taped them to the posters that he printed.
12 He chose not to do that or didn't think
13 about it, and I didn't think about it, and
14 that's what happened.

15 Q. Okay.

16 Do you blame Carl for not
17 putting contact information on those
18 posters?

19 A. No, because I believe those
20 were only 8 and a half by 11 small
21 posters, nothing big.

22 Q. Okay.

23 How big were the posters that
24 you printed?

20 (Pages 74 to 77)

Page 78

Page 80

1 A. I believe they were 11 by --
2 most of them were 11 by 17, but there were
3 some smaller ones. I can't remember the
4 exact mix out of the 46.

5 Q. Of the 46 posters that you
6 believe were hung, how many did you
7 personally hang?

8 A. I probably hung seven or eight.

9 Q. Were there specific places in
10 the university that you wanted these
11 posters hung or were you planning on
12 posting them throughout the university?

13 A. I'm not sure if the question is
14 clear to me.

15 Q. Sure.

16 Where in the university were
17 you hanging these posters?

18 A. The general idea was to hang
19 them where students could see them and
20 maybe be inspired to come to the
21 presentation.

22 Q. Now, November 28th would have
23 been a Monday, correct?

24 A. That's correct.

1 A. Most of them were torn down.

2 Q. When you say most of them, does
3 that mean some posters were not torn down?

4 A. Yes.

5 Q. I understand this is going to
6 require an approximation. If you can,
7 that would be helpful.

8 Of the 46 posters, how many
9 believe -- how many do you believe were
10 torn down?

11 A. My approximation would be --
12 I'll say 38.

13 Q. And where do you come up with
14 that number?

15 A. Well, I walked around and
16 looked -- to look for posters and I found
17 some still hanging but not a lot, so that
18 would be my guess. When I say 38, it
19 could have been 34. That's a -- you know,
20 mid-thirties type number.

21 Q. Okay.

22 When was it that you were
23 walking around and noticed that posters --
24 that all the posters that you believe were

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Page 81

1 Q. Would that have been the first
2 day back at school following a
3 Thanksgiving break for the students?

4 A. Yes.

5 Q. Other than the seven to eight
6 posters you hung, did you ever see the
7 other posters that Geri or perhaps
8 Samantha hung?

9 A. I certainly saw some of them.

10 Q. Okay.
11 Approximately how many did you
12 see?

13 A. I'm estimating here. Including
14 my own, 30.

15 Q. And can you identify the
16 buildings in which you saw these posters?

17 A. I saw posters in the science
18 building. I saw posters in the liberal
19 arts center. I saw posters on the library
20 door. I can't recall if I saw posters
21 elsewhere. I might have.

22 Q. I believe it's your position
23 that the posters were torn down; is that
24 correct?

1 hung up were not still hanging?

2 A. Probably about 7:15 a.m.
3 Wednesday morning.

4 Q. And that would have been
5 November 30th?

6 A. November 30th.

7 Q. And that would have been the
8 day of the speaking engagement?

9 A. That's correct.

10 Q. Do you have any knowledge when
11 any posters were allegedly taken down?

12 A. I received an e-mail from Geri
13 Smith on -- it was dated on Tuesday
14 afternoon that she sent it around -- I'll
15 say 1:30 p.m., more or less, and the gist
16 of that e-mail was Professor Fagal, is the
17 FIRE speech cancelled, and I saw that
18 e-mail from Geri late in the afternoon,
19 perhaps around 5:00 p.m. I wrote back and
20 I said what do you mean, and she said
21 well, the posters are all torn down, and I
22 was shocked.

23 And was there another part of
24 the question? Have I answered the

21 (Pages 78 to 81)

Page 82

1 question?

2 Q. I believe you have answered the
3 question in full. Thank you.

4 Is that the way that you
5 learned that posters were taken down by
6 getting an e-mail from Geri Smith?

7 A. Yes.

8 Q. When -- you've been using the
9 terminology throughout this litigation of
10 torn down; is that correct?

11 A. That's correct.

12 Q. Okay.

13 When I think of torn down, I
14 think of someone physically like tearing
15 something off the wall.

16 A. Yes.

17 Q. Did you have any -- did you
18 witness people taking the posters down?

19 A. No.

20 Q. Okay.

21 Do you know if in fact they
22 were torn down or just removed from the
23 wall?

24 A. In some cases, I saw some

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1 remnants, you know, like leftover tape or
2 whatever just on top. So they were
3 removed quickly at least in some cases.

4 Q. Is it fair to say that you
5 didn't witness any posters being removed;
6 is that correct?

7 A. I did not witness any posters
8 being removed.

9 Q. Did Geri Smith tell you that
10 she witnessed any posters being removed?

11 A. I don't think she did.

12 Q. Did anyone tell you they saw
13 the posters being removed?

14 A. Not that I can recall.

15 Q. As we sit here today, do you
16 know in fact who removed posters from the
17 walls?

18 A. Could you rephrase that?

19 Q. Sure.

20 As we sit here today, do you
21 know who removed posters that you believe
22 were removed about the FIRE speaker?

23 A. I don't know individual names
24 of who actually performed the task. I'm

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1 presuming they could have been work study
2 students who were told to take them down
3 but I don't know any specific person who
4 specifically tore down posters.

5 Q. Do you know who instructed
6 anyone to remove those posters?

7 A. I have no firsthand knowledge
8 of who told anybody to do it, though Alan
9 Levine did tell me that posters had been
10 torn down.

11 Q. Did Alan Levine tell you he
12 wanted the posters to be torn down?

13 A. Alan Levine told me when I had
14 a meeting with him that the posters were
15 torn down because of the prize
16 announcement, and the way he told that to
17 me I drew the conclusion that he approved
18 that they were torn down because of the
19 prize announcement.

20 Q. I believe you testified you
21 drew a conclusion.

22 Did Alan Levine tell you one
23 way or the other about his position --

24 A. Well, yes.

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1 Q. Let me --

2 A. I'm sorry.

3 Q. -- finish asking the question.

4 Did Alan Levine tell you that
5 he approved of the posters being torn
6 down?

7 A. I will say yes.

8 Q. And what were his words?

9 A. He said that I was pandering to
10 the students by offering prize money to
11 come to class.

12 Q. You testified that the FIRE
13 speaker spoke Wednesday evening, November
14 30th; is that correct?

15 A. No.

16 Q. That the FIRE speaker was
17 scheduled to speak Wednesday evening,
18 November 30th?

19 A. No.

20 Q. What do I have wrong?

21 A. The FIRE speaker spoke at my
22 2:00 p.m. class on Wednesday, November
23 30th.

24 Q. Okay.

22 (Pages 82 to 85)

1 So the class that you normally
2 taught was 2:00 on Wednesdays during that
3 semester; is that correct?

4 A. That's correct.

5 Q. And as part of the class, it
6 was required that the students attend this
7 lecture, correct?

8 A. No.

9 Q. Did you take attendance?

10 A. No.

11 Q. Did you tell the students that
12 it was encouraged that they attend?

13 A. Yes.

14 Q. If the students didn't attend
15 the lecture, did that mean they missed the
16 class that day?

17 A. Yes.

18 Q. And I believe you testified
19 that Dr. Levine told you it was pandering
20 to offer prize money to come to the class;
21 is that correct?

22 A. Yes.

23 Q. You testified that Dr. Levine
24 told you that the posters were torn down

1 being torn down and I did not think that
2 Marywood University tore them down. I
3 assumed it was some student who didn't
4 like me or something about the topic tore
5 them down. I did not assume the
6 university tore them down.

7 So I immediately went down to
8 the UPS Store on Tuesday, luckily before
9 they closed, and I got not 46 posters done
10 but maybe 20 or so and I had them printed,
11 and I sent an e-mail to Sister Anne Munley
12 and Carl Oliveri expressing surprise that
13 my posters had been torn down. I said I
14 got them reprinted and I would show up on
15 Wednesday morning bright and early to get
16 them hung up and could the university
17 please send out a blast e-mail to students
18 saying something along the lines of, gee,
19 we had a terrible thing happen. Professor
20 Fagal's posters were torn down. We'd like
21 to let you know there is a presentation
22 speech you could attend on Wednesday
23 afternoon and wouldn't it be nice to go
24 to, you know, counteract the tearing down

1 because of the prize announcement; is that
2 correct?

3 A. Yes.

4 Q. Did Dr. Levine tell you that
5 the posters were torn down because it was
6 a FIRE speaker?

7 A. No.

8 Q. Did Dr. Levine tell you that
9 the posters were being torn down because
10 the speaker was going to be talking about
11 free speech?

12 A. No.

13 Q. Did the posters actually offer
14 prize money?

15 A. No.

16 Q. Okay.

17 Tell me why not.

18 A. Because the posters that
19 offered the prize money were torn down.
20 Most of them were torn down.

21 Q. So --

22 A. I --

23 Q. I'm sorry. Go ahead.

24 A. I learned about the posters

1 of the posters. So that's the e-mail I
2 sent.

3 So I showed up on Wednesday
4 morning with the newly-printed posters
5 with the prize announcement on them, as
6 had done on Monday morning, and I
7 personally went over to the student
8 activities office with the posters ready
9 to get stamped and would go quickly hang
10 them up to do the best we could at getting
11 a crowd, and that's when I was told that,
12 no, the prize announcement could not be on
13 there and had to be cut off before the
14 posters could be stamped approved.

15 Q. Okay.

16 Was it your understanding if
17 you took that prize money off that the
18 posters would be stamped and approved?

19 A. Yes.

20 Q. Did you take the prize money
21 off?

22 A. Yes.

23 Q. And the posters were stamped
24 and approved?

Page 90

1 A. Yes.
 2 Q. And were those posters hung?
 3 A. Yes.
 4 Q. Were those posters torn down?
 5 A. Some were.
 6 Q. Do you know who did that?
 7 A. No, I do not.
 8 Q. Do you know if it was the
 9 administration?
 10 A. I do not know for sure.
 11 Q. You'd just be speculating?
 12 A. I could speculate.
 13 Q. Okay.
 14 But it would be that
 15 speculation, you don't know?
 16 A. I don't know.
 17 Q. You testified earlier that
 18 before you posted another 20 posters that
 19 of the posters that you believe were torn
 20 down, it was the posters with the prize
 21 money --
 22 A. Yes.
 23 Q. -- is that correct?
 24 A. Yes.

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1 Q. Posters that were not torn
 2 down, did they have the prize money on it?
 3 A. Yes.
 4 Q. Okay.
 5 So some posters with the prize
 6 money stayed up, some posters with the
 7 prize money were torn down?
 8 A. Yes. Posters that remained
 9 were mostly the small ones because I
 10 printed some small ones that were 8 and a
 11 half by 11. And, for example, one of the
 12 first ones I saw hanging was outside the
 13 -- I think the second floor men's room in
 14 the liberal arts center on a bulletin
 15 board with a lot of other posters,
 16 something that would be easy to overlook
 17 in terms if somebody had gone on a
 18 tear-down campaign. So some posters were
 19 not torn down. They were missed by those
 20 who were given the task of tearing down
 21 the posters.
 22 Q. And it was up to you or people
 23 that were working with you to decide where
 24 those posters would be hung, correct? No

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1 one at the administration said these are
 2 where you have to hang the posters,
 3 correct?
 4 A. Correct.
 5 Q. You alluded to the fact that
 6 perhaps it was a student who didn't like
 7 you tore down the posters.
 8 A. Well, that's mere speculation.
 9 I had no idea.
 10 Q. Do you know one way or the
 11 other whether there were students that
 12 didn't like you?
 13 A. No, not particularly.
 14 MR. COHEN: Stephanie, can we
 15 take a five-minute bathroom break?
 16 MS. PEET: Sure.
 17 ---
 18 THE VIDEOGRAPHER: We're now
 19 off the record. The time is 11:04
 20 a.m.
 21 ---
 22 (At this time, a short break
 23 was taken.)
 24 ---

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1 THE VIDEOGRAPHER: We are now
 2 on the record. The time is 11:16
 3 a.m.
 4 ---
 5 BY MS. PEET:
 6 Q. Dr. Fagal, are you okay to
 7 continue?
 8 A. Yes.
 9 Q. Just a reminder, you are still
 10 under oath and all of the testimony you
 11 provide needs to be complete, accurate,
 12 and truthful.
 13 Do you understand?
 14 A. I understand.
 15 Q. Okay.
 16 Right before we took a break,
 17 you testified that you had another 20
 18 posters printed for the purposes of
 19 hanging them for the speaker.
 20 Do you remember that testimony?
 21 A. Yes.
 22 Q. Were those 20 posters that you
 23 printed -- were they ultimately hung?
 24 A. Yes.

24 (Pages 90 to 93)

Page 94

1 Q. To your knowledge, did anyone
2 tear those down?

3 A. To my knowledge, there were
4 posters missing that should have been
5 hanging that day.

6 Q. Do you have any knowledge as to
7 what happened with those posters?

8 A. I have no personal knowledge as
9 to what happened to those posters.

10 Q. Okay.

11 As of 2:00 p.m. Wednesday,
12 November 30th, were there posters hung at
13 Marywood University about the advertising
14 for the speaking engagement?

15 A. Posters had been hung prior to
16 2:00 p.m. that day to announce the
17 speaking engagement.

18 Q. Okay.

19 Between November 28th when the
20 posters first were hung by you and your
21 team until November 30, 2012 -- 2011, was
22 there always a poster -- at least one
23 poster hung at the university about this
24 speaking engagement?

Page 95

1 A. I presume, yes.

2 Q. Did Mr. Creeley from FIRE come
3 to speak?

4 A. Yes, he did.

5 Q. How long did he speak for?

6 A. Approximately 40 minutes.

7 Q. And was that the scheduled
8 length of his presentation?

9 A. Yes. There was some discussion
10 time afterwards, so 40 minutes is an
11 estimate.

12 Q. Is it fair to say that no one
13 from Marywood administration shut down the
14 speaker?

15 A. Yes, it's fair to say that.

16 Q. Is it fair to say that no one
17 from Marywood administration shortened the
18 speaker's discussion?

19 A. No one from the Marywood
20 University administration shortened the
21 speaker's presentation or discussion.

22 Q. Did anyone from Marywood
23 administration sensor or try to sensor
24 what it is that he was going to discuss?

Page 96

1 A. Do you mean of knowledge I had
2 at the time?

3 Q. I'm asking you did anyone from
4 Marywood try and change the topic or tell
5 Mr. Creeley he couldn't speak about
6 specific topics?

7 A. No.

8 Q. How many people were in
9 attendance at this speaking engagement?

10 A. Probably most of my class
11 members, and that might have been -- I'll
12 say -- I'm not sure what that number would
13 have been between Dr. Jackson and myself
14 but let me pick a number. Say -- I'll say
15 33, and then I would say there were
16 probably roughly 12 to 15 more people who
17 showed up.

18 Q. The 12 to 15 additional folks
19 that showed up, were they students?

20 A. Some were students, I believe,
21 but I didn't know -- I don't know for
22 sure.

23 Q. Do you know who the other
24 people were?

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1 A. One person I noticed was Frank
2 Falcone.

3 Q. And who is Mr. Falcone?

4 A. I think his title was -- had
5 something to do with graduate students and
6 he had been a student in my class some
7 years previously, and so he showed up.

8 Q. Was he -- so I just want to
9 make sure I understand this correctly.

10 Was he part of the faculty or
11 administration at Marywood?

12 A. Administration.

13 Q. Okay.

14 Do you know how the 12 to 15
15 folks that were not part of your course
16 learned about this speaking engagement?

17 A. I do not know how they learned
18 about the speaking engagement.

19 Q. Do you have any knowledge of
20 anyone from Marywood administration
21 telling students, faculty or anyone, not
22 to attend the speaking engagement?

23 A. I have no knowledge of anything
24 like that.

25 (Pages 94 to 97)

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Page 100

1 ---
2 (At this time, a document was
3 marked for identification as Exhibit
4 Fagal-5.)
5 ---

6 BY MS. PEET:

7 Q. What has been marked and placed
8 before you as Fagal Exhibit-5 are
9 documents Bates stamped DEF001447 through
10 1475. It's my understanding that this is,
11 for lack of better words, a chronology of
12 events regarding the FIRE speaker that was
13 prepared by you.

14 Is that an accurate
15 description?

16 A. Yes.

17 Q. So is it fair to say that what
18 has been marked as Exhibit-5 is a document
19 you prepared that, to the best of your
20 recollection and knowledge, put together
21 the chronology of the events that led to
22 the November 2011 FIRE incident, for lack
23 of better words?

24 A. I did my best to compile this

1 administration, and so now I was thinking
2 about perhaps going public in some way
3 with what had happened.

4 Q. And by going public, what is it
5 that you're referencing?

6 A. Well, at this point, I wasn't
7 exactly sure. It could have been sending
8 out e-mails to people. It could have been
9 trying to say, hey, something is rotten in
10 the state of Denmark, to quote a phrase.

11 Q. Did you ever ask to have a
12 meeting with Sister Munley to discuss
13 this?

14 A. No.

15 Q. If I'm doing my math right, is
16 it fair to say that approximately 45 to 50
17 people attended this event?

18 A. That sounds about right.

19 Q. Were you pleased with the
20 turnout?

21 A. I wasn't displeased given the
22 situation. In this day and age, crowds
23 form with a lot of social media, spur of
24 the moment type things, but I'm not a

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Page 101

1 accurately, and at the time I did.

2 Q. When did you prepare this?

3 A. According to my date here, it
4 says December -- 12/21/2011 is the date on
5 comment one.

6 Q. Does that seem about accurate
7 as to when you put this together?

8 A. Yes.

9 Q. Why did you put this together?

10 A. Well, I felt I had been
11 wronged, if you will say that -- if I can
12 say that, by the university. I had tried
13 to find out what happened to my posters.
14 I inquired about the decision-making that
15 went into tearing down the posters. I had
16 tried to get to the bottom of what had
17 happened.

18 Q. Were you preparing this for you
19 or for you to give to someone else?

20 A. I was preparing this. I had
21 tried to, as they say, go through channels
22 and seek redress for what had happened. I
23 got no redress for what had happened and
24 -- although I tried to work with the

1 social media expert. But people can tweet
2 and say, hey, what the heck, let's go to
3 -- you know, last minute, let's go to that
4 Fagal, you know, presentation and if one
5 of us wins the 50 bucks, you know, we'll
6 all buy pizza.

7 So crowds -- you can read in
8 any of the news, they can form almost
9 instantaneously with, you know, Facebook
10 messages, and tweets, and Snapchats, and
11 all these things I really don't use but
12 the students do, and so you never know
13 what will catch the spark.

14 So if one student sees one
15 poster and that student is, shall we say,
16 a tweeting ringleader, then she might be
17 the one who by herself causes a crowd of
18 one hundred students to come out, and if
19 she's that one student who doesn't see
20 that one poster, bingo, you don't get
21 those hundred students.

22 So it's a crap shoot, shall we
23 say, in gambling terms, and that's why the
24 posters were important because you never

26 (Pages 98 to 101)

Page 102

1 know which poster will catch which
2 person's eye and what that person might do
3 in this day and age with social media to
4 gather a crowd together.

5 Q. Was Twitter popular in 2011?

6 A. I don't know but there were
7 various instant message things going on
8 and that's why I tried to cover whatever
9 was going on. I don't know.

10 Q. Was Snapchat popular in 2011?

11 A. I don't know.

12 Q. Did you use social media to
13 advertise the event?

14 A. No.

15 Q. So you were hoping other people
16 used social media to advertise the event?

17 A. Yes. I sent an e-mail to class
18 members, you know, telling them about the
19 event. I think in that -- I think in that
20 e-mail I mentioned that it was open to
21 other people.

22 Q. Did the folks that you sent the
23 e-mail to -- did they attend?

24 A. Most of them did. Most of the

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1 Q. And you're not aware of anyone
2 that was told they couldn't attend the
3 event, correct?

4 A. Not aware of anyone who was
5 told they could not attend the event.

6 Q. Have we exhausted all of the
7 ways in which you chose to advertise the
8 event?

9 A. (Indicating.)

10 Q. And in summary, you posted
11 posters and you sent an e-mail out to
12 students in your class, correct?

13 A. That's correct.

14 Q. Were you told you couldn't
15 engage in any other ways to advertise or
16 promote the event?

17 A. No.

18 Q. The -- I believe you testified
19 that the posters that Mr. Oliveri printed
20 out, which ultimately you didn't use, no
21 one required you to pay for that, correct?

22 A. That's correct.

23 Q. The posters that you went to
24 UPS to print out, you paid for that,

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1 class members attended.

2 Q. Besides your class members, did
3 you send an e-mail out to anyone else?

4 A. No, not that I recall.

5 Q. Did anyone tell you you
6 couldn't?

7 A. No.

8 Q. Did anyone win the prize money?

9 A. Yes.

10 Q. Do you remember who won?

11 A. I don't recall the name.

12 Q. Was it a student?

13 A. Yes.

14 Q. Was it someone from your class?

15 A. I believe it was.

16 Q. Do you know if that person
17 attended the speaking engagement because
18 of the attendance prize?

19 A. I don't know.

20 Q. So whatever happened with the
21 posters, the event still went on, correct?

22 A. Yes.

23 Q. And people attended the event?

24 A. Some people attended the event.

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1 correct?

2 A. That's correct.

3 Q. Did you ever submit for
4 reimbursement to Marywood?

5 A. No.

6 Q. Why not?

7 A. Because it was my donation to
8 academia.

9 Q. I believe you testified earlier
10 this morning that at some point you
11 contacted FIRE.

12 Did you contact FIRE shortly
13 after the event on November 30th?

14 A. Well, Will Creeley was from
15 FIRE, of course, and he knew that poster
16 -- he knew that day that posters had been
17 torn down because I told him.

18 Q. Because you told him?

19 A. Uh-huh.

20 Q. Did you talk to anyone else at
21 FIRE about the incident? And I'm calling
22 it an incident for lack of better words.

23 A. Yes, later -- later in December
24 at some point I contacted FIRE and

27 (Pages 102 to 105)

Page 106

1 explained to them how the events unfolded.

2 Q. Okay.

3 Other than what we've already
4 discussed about the unfolding of events,
5 is there anything else that is relevant to
6 what happened with the speaker?

7 A. I'm not sure I understand your
8 question.

9 Q. Sure.

10 You said you contacted FIRE
11 sometime in December to explain to them
12 the events that transpired.

13 Have we exhausted all of the
14 events that transpired regarding this FIRE
15 poster incident?

16 A. I don't know about specific
17 events. At one point -- I'm trying to
18 remember when. I think somebody said the
19 posters had not been stamped approved on
20 Monday and that's why they were torn down,
21 and I'm trying to refresh my memory who
22 said that but I was also told that.

23 Q. Okay.

24 Anything else that you could

Page 108

1 of Marywood administration to discuss
2 this?

3 A. I'm not sure what you mean by
4 outside Marywood administration.

5 Q. Well, you contacted FIRE?

6 A. Yes.

7 Q. Did you contact any other group
8 or entity?

9 A. No.

10 Q. You said it was in December
11 when you contacted FIRE.

12 Do you remember when that was?

13 A. I can't recall exactly.

14 Q. Do you remember with whom you
15 spoke?

16 A. I believe I had e-mails with
17 Peter Bonilla.

18 Q. When you contacted FIRE, was
19 that by e-mail, phone, in person? How did
20 you do that?

21 A. E-mail.

22 Q. So it's your testimony that you
23 e-mailed with Peter -- probably Peter
24 Bonilla at FIRE?

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1 think of that pertains to this speaker or
2 poster FIRE incident that we haven't
3 already discussed?

4 A. Not right now.

5 Q. What was FIRE's response to
6 you?

7 A. I forget the exact response but
8 FIRE -- I did provide FIRE with
9 information about what had happened, and
10 FIRE contacted Sister Anne Munley about
11 the events.

12 Q. Why did you contact FIRE?

13 A. Well, it was their speaker
14 whose presentation I think had been
15 interfered with, not physically but in
16 terms of the publicity, and FIRE's
17 mission, as I understand it, is free
18 speech on college campuses. And so I
19 thought that there might be a fit where
20 FIRE might contact Marywood and saying
21 perhaps there's a problem here that needs
22 looking at or fixing, so that's why FIRE
23 would be the people to contact.

24 Q. Did you contact anyone outside

Page 109

1 A. Yes.

2 Q. Did you produce those e-mails
3 in this litigation?

4 A. I can't recall.

5 Q. I'm going to ask that to the
6 extent there's any e-mails that you have
7 with Peter Bonilla or anyone at FIRE
8 regarding the November 2011 incident that
9 you check for those and produce those.

10 A. Yes.

11 Q. Thank you.

12 MR. COHEN: Stephanie, you're
13 saying that there are none in the
14 production?

15 MS. AHMAD: I would have to
16 check.

17 MR. COHEN: Okay.

18 MS. PEET: For what it's worth,
19 there's been a very large production
20 and we'll talk about that, but that
21 doesn't -- that does not ring any
22 bells.

23 MR. COHEN: Okay.

24 MS. PEET: And if it has been

28 (Pages 106 to 109)

Page 110

1 produced, then please just let us
2 know.

3 MR. COHEN: Okay.

4 - - -

5 (At this time, a document was
6 marked for identification as Exhibit
7 Fagal-6.)

8 - - -

9 THE WITNESS: It's possible I
10 might have contacted Will Creeley at
11 FIRE and then I might be recalling
12 that Bonilla sent an e-mail to Sister
13 Anne. It's possible, so...

14 BY MS. PEET:

15 Q. I recognize we're going back --

16 A. Yeah.

17 Q. -- four to five years.

18 A. Four and a half years, right.

19 Q. And that's perfectly fine. I
20 don't expect you --

21 A. Right.

22 Q. -- to have everything committed
23 to memory. All I am suggesting and
24 telling you is to the extent there are any

Page 112

1 A. I can't recall.

2 Q. Do you remember making any
3 edits, or suggestions, or comments to this
4 letter?

5 A. No.

6 Q. Did you receive a copy of the
7 letter after it was sent out?

8 A. I can't recall for sure but I
9 think I received a copy.

10 Q. Did you ask for FIRE to send
11 this letter to Sister Munley on your
12 behalf?

13 A. I would say I didn't ask FIRE
14 to send the letter. FIRE got the facts
15 and then they decided to send the letter.

16 Q. The facts that FIRE received,
17 were those the facts that you gave to
18 FIRE?

19 A. Yes.

20 Q. Do you know if FIRE got the
21 facts from any other source?

22 A. No.

23 Q. Did you authorize or approve
24 this letter to be sent to President

Page 111

1 written communications which would include
2 e-mails between you and anyone at FIRE
3 about this incident, then they be
4 produced --

5 A. Yes.

6 Q. -- to the extent that they have
7 not.

8 A. Uh-huh.

9 Q. And if they have been produced,
10 just kindly direct us to those and all is
11 good.

12 You testified just a few
13 moments ago that after you contacted FIRE
14 to discuss the November 2011 incident,
15 FIRE then contacted Sister Munley.

16 This letter that has been
17 placed before you, is this what you mean
18 by FIRE contacting Sister Munley?

19 A. Yes.

20 Q. Did you have any part in
21 drafting this letter?

22 A. No.

23 Q. Did you see this letter before
24 it was sent to President Munley?

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1 Munley?

2 A. No.

3 Q. Did Carl Oliveri tell you that
4 Alan Levine endorsed the action of tearing
5 down the posters?

6 A. When I met with Carl Oliveri on
7 November 30th and I asked him what had
8 happened -- actually, I first started
9 saying, gee, wasn't it terrible that my
10 posters got torn down, geez, and then he
11 said we tore them down. I was shocked. I
12 said -- taken aback and I said why, and
13 then that's when he brought up, well, at
14 Marywood we don't pay students to go to
15 class. I shook my head and I said what.
16 He said, well, you had the prize
17 announcement on the posters and that can't
18 happen, so that's why the posters were --
19 that's why we tore down the posters.

20 That's why they were torn down,
21 and I said well, why, and then he said
22 well -- and I said who -- you know,
23 basically I said who gave you the
24 directions because I thought he was not

29 (Pages 110 to 113)

Page 114

1 the top person on the totem pole, and
2 that's when he mentioned Alan Levine and
3 he mentioned executive council had had a
4 meeting and had discussed this and had
5 approved tearing down the posters.

6 Q. Did Mr. Oliveri tell you that
7 Dr. Levine endorsed the tearing down of
8 the posters?

9 A. He did not use the word
10 "endorsed". He just said that Alan Levine
11 -- that was the name brought up and then
12 he used the general term "executive
13 council". So I assume that just like any
14 organization you might be in the minority
15 but if you're on the executive council and
16 if you're one of five and maybe you don't
17 agree with it but if the other four said
18 yes, then you might go ahead with it. So
19 you might not approve but you might still
20 give the order. So I don't know exactly
21 what Alan Levine thought.

22 Q. Did Carl tell you that the
23 posters were being torn down because of
24 the fact that the speaker was from FIRE?

Page 115

1 A. No.

2 Q. Did Carl tell you that the
3 posters were torn down because the speaker
4 was going to be talking about free speech
5 at a university?

6 A. No.

7 Q. The 20 new posters that you
8 posted on campus, did they have the
9 attendance prize language?

10 A. No.

11 Q. And is that because it was your
12 understanding that was not approved?

13 A. I was told it was not approved.

14 Q. Is that why you didn't include
15 that language in the posters?

16 A. The language was on the posters
17 as I delivered them on Wednesday morning
18 because I knew nothing about any reasoning
19 behind that decision. So with the 20
20 posters, Carl Oliveri and I together
21 snipped off with scissors the prize
22 announcement part of the posters leaving
23 the e-mail contact information, and then
24 those are the posters that got hung up as

Page 116

1 soon as I left the office.

2 Q. Okay.

3 A. And some of those posters were
4 torn -- were missing later in the day.

5 Q. And I believe you testified you
6 don't know the whereabouts of those
7 posters, correct?

8 A. I do not know.

9 Q. And do you have any idea how
10 many posters were missing, using your
11 words?

12 A. Well, I know I took some
13 pictures of blank walls, so I would say
14 about at least seven or ten especially on
15 big areas like on a wall by the hallway or
16 the stairs come in from outside in LAC, so
17 some posters were missing that day.

18 Q. Did anyone tell you what they
19 believed happened with those posters?

20 A. I sent an e-mail to Carl
21 Oliveri that day and said, gee, Carl, even
22 those posters were torn down even though
23 they had had the prize announcement torn
24 off, and he wrote back saying he had no

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1 knowledge of that, basically saying that
2 he did not direct those posters to be torn
3 down.

4 MS. PEET: Okay. Let's just
5 let her finish the tape.

6 ---

7 THE VIDEOGRAPHER: We are now
8 off the record. The time is 11:45
9 a.m. This ends disk number one.

10 ---

11 (At this time, a short break
12 was taken.)

13 ---

14 THE VIDEOGRAPHER: We are now
15 on the record. The time is 11:49
16 a.m. This starts disk number two.

17 ---

18 (At this time, a document was
19 marked for identification as Exhibit
20 Fagal-7.)

21 ---

22 BY MS. PEET:

23 Q. Dr. Fagal, have you ever seen
24 this document before?

30 (Pages 114 to 117)

Page 118

1 A. I believe I have as a quick --
 2 long time ago.
 3 Q. Okay.
 4 Is it fair to say that this is
 5 Sister Munley's response to the letter
 6 that Marywood received from Peter Bonilla
 7 at FIRE?
 8 A. I assume that's correct.
 9 Q. Okay.
 10 It says here please note that
 11 the posters announcing the lecture but not
 12 the offer of a monetary reward for
 13 attendance were permitted to be posted
 14 throughout the university campus.
 15 Did I read that correctly?
 16 A. Let me see where this is now.
 17 Let's see.
 18 Q. It's the fourth line of the
 19 first paragraph. It starts with please.
 20 A. I see what the second sentence
 21 says.
 22 Q. All my question was do you see
 23 that.
 24 A. What is your question?

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1 Q. Do you see that?
 2 A. I see that.
 3 Q. Okay.
 4 Is it true that posters that
 5 did not offer the monetary reward for
 6 attendance were posted and allowed to be
 7 posted at the university?
 8 A. Yes, subject to the
 9 qualification that some of those posters
 10 that were approved without the prize
 11 announcement were torn down or went
 12 missing on the day of the lecture, the day
 13 they were hung.
 14 Q. And were those the posters that
 15 you testified that Carl told you he didn't
 16 know what happened?
 17 A. Yes.
 18 Q. And Carl told you that he did
 19 not authorize, or approve, or tell anyone
 20 to take down those posters?
 21 A. I believe he said something to
 22 those -- he said something along those
 23 lines.
 24 Q. Are you aware of anyone else at

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1 Marywood that instructed or told anyone to
 2 remove those posters?
 3 A. I don't know who gave the
 4 directions to tear down the posters or --
 5 nor do I know who tore down the posters.
 6 Q. You don't even know if a
 7 direction was given, correct?
 8 A. I have no firsthand knowledge
 9 that the direction was given.
 10 Q. Okay.
 11 A. Other than being told by Carl
 12 Oliveri that we tore down the posters.
 13 Q. I'm talking about the 20 new
 14 posters that you posted.
 15 A. No.
 16 Q. Do you have any knowledge that
 17 anyone from Marywood instructed anyone to
 18 take them down?
 19 A. I have no knowledge but I could
 20 speculate.
 21 Q. Okay.
 22 And the FIRE lecture took place
 23 on the university, correct?
 24 A. FIRE took place at the

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1 university.
 2 Q. Did you receive a copy of what
 3 is marked as Exhibit-7?
 4 A. Yes.
 5 May I point something out in
 6 regard to the second sentence?
 7 Q. Sure.
 8 A. It says the alleged occurrence
 9 is in regard to taking down a poster
 10 announcing a lecture. A poster is
 11 singular. We're talking about multiple
 12 posters being taken down.
 13 Q. Okay.
 14 So you take issue with the fact
 15 that it says a poster, correct?
 16 A. Yes, I do.
 17 Q. Okay.
 18 The posters that were taken
 19 down, were they for the same event?
 20 A. Yes.
 21 Q. Okay.
 22 And the posters were largely
 23 identical except for maybe size?
 24 A. Yes.

31 (Pages 118 to 121)

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1 Q. Anything else that you take
2 issue with?

3 A. Factually, let me see. I don't
4 understand what both sets of posters might
5 be. Try to help me here. The sentence
6 that says moreover, the lecture announced
7 in the posters was conducted on the
8 university campus in the Comerford Theater
9 on November 30, 2011, as advertised in
10 both sets of posters.

11 So both -- the first set of
12 posters would be the set that had been
13 stamped approved with the prize
14 announcements and then were torn down, so
15 they were up for a brief while. The
16 second set of posters -- when you say both
17 sets, I presume two. The second set of
18 posters were those stamped approved on
19 Wednesday the 30th and they did not have
20 the prize announcement on them and many of
21 those were torn down.

22 If I may speculate here, I'm
23 assuming that perhaps a work study student
24 was originally told tear down the posters

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1 that announce the speech and that -- at
2 that point, all the posters had on them
3 the FIRE announcement -- I mean the prize
4 announcement, and the student doing the
5 best he or she could tore down those
6 posters.

7 And then on Wednesday morning,
8 being a good work study student said oh,
9 my goodness, here are more posters. Let
10 me do my job and tear them down even
11 though Carl Oliveri, if asked, would say
12 no, no, no, those posters are fine, leave
13 them up.

14 So what I believe is that those
15 posters were torn down by somebody like I
16 just described but not under the direction
17 of Carl Oliveri. That's what I think but
18 I have no firsthand knowledge.

19 Q. Do you believe Mr. Bonilla or
20 someone else from FIRE gave you this
21 letter?

22 A. This response from Sister Reed
23 -- I mean Sister Munley?

24 Q. Sister Munley.

Page 124

1 A. I can't recall.

2 - - -

3 (At this time, a document was
4 marked for identification as Exhibit
5 Fagal-8.)

6 - - -

7 BY MS. PEET:

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. Did you write this?

11 A. Yes.

12 Q. Did anyone help you write this?

13 A. No.

14 Q. Did you show it to anyone
15 before you sent it to Dr. Levine?

16 A. I can't remember exactly. I
17 might have shown it or parts of it to
18 Dr. Jackson.

19 Q. Do you remember what his
20 reaction was, if anything?

21 A. I believe he might have -- let
22 me say as I recall, he said -- I was
23 asking when I had my list of requests, he
24 said maybe I'm asking for too much and of

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1 course that would be -- maybe I wouldn't
2 expect all those requests to be granted
3 but that would be a bargain point and one
4 could then say, okay, I'll give up the
5 apology for the speaker or whatever. So
6 that was an opening list of things that I
7 thought should happen based on the past.

8 Q. When Jackson told you maybe
9 you're asking for too much, did you make
10 any changes?

11 A. I can't recall. I don't think
12 so though.

13 Q. Did you ever want to demand
14 more than what you demand in here?

15 A. No.

16 Q. How did you come up with this
17 list of demands?

18 A. Marywood had held events that I
19 had been aware of where they would have
20 prize money and food and stuff like that
21 offered to the students to come to the
22 events, so I thought, well, that would be
23 good.

24 Q. In those situations you just

32 (Pages 122 to 125)

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1 described, was it ever associated with a
2 course?

3 A. There were -- there were
4 associations with courses in the sense
5 that professors were encouraged to come
6 and bring their class and have it be part
7 of their class for that evening, so that
8 would be an official class.

9 Q. What about instructors putting
10 a monetary prize for a lecture that's part
11 of a course syllabus?

12 A. What about that? What was the
13 question?

14 Q. Are you aware of that
15 happening?

16 A. I'm not aware of professors
17 offering monetary prizes to their class.
18 I know Alan Levine, for example, told me
19 about professors bringing pizza to class.

20 Q. What about a monetary prize for
21 attending a course or a lecture affiliated
22 with a course?

23 A. I don't recall any.

24 Q. Okay.

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1 At the time that you made these
2 list of demands, I assume you already knew
3 that there were -- it wasn't in the budget
4 for Marywood to pay a thousand dollars for
5 a speaker, correct?

6 A. No.

7 Q. Well, I think you testified
8 earlier that you were told that there was
9 no room in the budget to pay to have a
10 FIRE -- or any speaker come to campus,
11 correct?

12 A. I -- no. That was the fall
13 semester of 2011. I'm not a budget person
14 but I assume that budgets for the
15 following semester would be different and
16 things had not been totally allocated
17 financially for that semester, and of
18 course one could also say, well, gee, you
19 know, there's no money in the 2011-2012
20 budget, Professor Fagal, but we can do the
21 fall of 2012. So that's something that's
22 obviously to me anyway open to
23 negotiation.

24 Q. Do you say anywhere in here

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1 that you're willing to negotiate?

2 A. I finish it by saying by
3 agreeing to the above, I will consider
4 this matter closed. I do not say anywhere
5 that if you don't give me everything, then
6 nothing can happen. So I think in any,
7 you know, economic negotiation like this
8 people will have their high offers and
9 people have their low offers, and then
10 there'll be negotiation in the normal
11 course of business as I believe lawyers do
12 all the time --

13 Q. Okay.

14 A. -- when they have settlements,
15 for example.

16 Q. Did you make it known to
17 Dr. Levine that you wanted to negotiate?

18 A. I believe that was the
19 implication by my discussion with him and
20 the fact that he sent -- he wanted to send
21 this letter on to Sister Anne Munley. And
22 I believe you're probably going to come to
23 it, but he wrote later -- he said Sister
24 Anne Munley -- I might not be quoting

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1 exactly. She agrees to none of your
2 requests or demands, however he phrased
3 it. So it was no movement by the other
4 side to talk.

5 Q. Do you think you were
6 reasonable in this e-mail?

7 A. I think I was reasonable in
8 terms of an opening offer or suggestion.

9 Q. Do you think --

10 A. If you would like to go through
11 these individually, go ahead.

12 Q. Do you think it's reasonable to
13 tell a Catholic university that they
14 should atone for its sins?

15 A. If they had -- if the
16 university can be considered to have
17 sinned, yes.

18 Q. But you wrote that?

19 A. Yes.

20 Q. So you think that was
21 reasonable?

22 A. Yes.

23 Q. Okay.

24 Do you think it's reasonable

33 (Pages 126 to 129)

Page 130

1 that they issue you a written public
2 apology?

3 A. I think it's not unreasonable
4 because I think that will -- confession
5 might be good for the soul and will make
6 one think twice before doing such things
7 again in the future.

8 Q. Okay.

9 And that that written public
10 apology be sent by e-mail to every faculty
11 member including adjuncts and every
12 student?

13 A. That would be my wish. I think
14 that would -- you know, if something is --
15 if people have made, shall we say,
16 mistakes, to own up to your mistakes I
17 think is a noble thing.

18 Q. Do you think it was reasonable?

19 A. What do you mean by reasonable?

20 Q. I'm asking you; do you think it
21 was reasonable?

22 A. Yes.

23 Q. Okay.

24 Do you think it was reasonable

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1 free to come to presentations at night
2 and, therefore, a presentation at night
3 would be good.

4 Q. Do you think that demand was
5 reasonable?

6 A. Yes.

7 Q. Do you think it was reasonable
8 that you said a week before the event
9 Marywood will print ten 11 by 17 color
10 posters, ten 11 by 17 black and white
11 posters, ten 8 and a half by 14 color
12 posters, and ten 8 and a half by 14 black
13 and white posters advertising the event?

14 A. Yes.

15 Q. Do you think it was reasonable
16 to demand that Marywood use the other
17 \$1,000.00 FIRE fee plus food and motel
18 bill to pay for an evening presentation
19 open to the whole community probably in
20 early April? Reasonable?

21 A. Yes, make it -- open it to the
22 public and to the community would be I
23 think not a bad idea. Marywood does have
24 events where they invite -- make it clear

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1 to ask Marywood to pay \$2,000.00 to FIRE
2 to give two presentations on campus for
3 spring 2012 and also pay normal meal and
4 lodging expenses?

5 A. Yes. I believe when they
6 invite speakers to come, they pay lodging
7 expenses and meals.

8 Q. Okay.

9 Do you think it was reasonable
10 to tell Marywood to host a \$1,000.00 FIRE
11 session in -- probably in February for a
12 daytime class presentation to the social
13 science 201 class and the presentation
14 should be open to all of campus?

15 A. Which number --

16 Q. Do you think that was
17 reasonable?

18 A. Which number are we on?

19 Q. Five.

20 A. Well, my idea here, yes, was to
21 have a daytime event because many students
22 might be on campus during the day and so
23 you would have a presentation during the
24 day, and then sometimes students are more

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1 to the community they're invited.

2 Q. Okay.

3 Reasonable for you to demand
4 that Marywood spend at least \$1,000.00
5 documented on publicity to be coordinated
6 with you for the evening program which
7 would be open to the public and all
8 members of the campus community?

9 A. I would say this one would be a
10 little -- a little more unreasonable given
11 that there be -- that posters might go up.
12 That would be a negotiating point, shall
13 we say.

14 Q. Do you think it was reasonable
15 to demand that Marywood provide 1,000
16 thousand slices of free pizza and 500 cans
17 of cold soda at the evening presentation?

18 A. Well, I think the soda might be
19 reasonable because that will not spoil.
20 So if only 200 people -- if 100 people
21 showed up, it might be 100 cans of soda if
22 everybody gets one and that would be it.

23 Q. Do you think it was reasonable?

24 A. The 500 cans of soda?

34 (Pages 130 to 133)

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1 Q. And the 1,000 slices of free
2 pizza for your evening presentation.

3 A. I think that might be a bit of
4 a reach. 1,000 slices of pizza depending
5 on -- you know, two slices a person would
6 be 500 people. That would be a pretty
7 full house, a crowd, but, again, that
8 could be -- instead of pizza one could
9 offer Snickers bars or something. That's
10 a negotiating point.

11 Q. You didn't demand Snickers
12 bars.

13 You demanded 1,000 slices of
14 pizza, correct?

15 A. What do you mean by demand?

16 Q. Aren't these demands?

17 A. Well, if I look back, it says
18 -- let me read. Do I use the word
19 "demand" anywhere and imply anywhere where
20 it's all or nothing?

21 At the top of DEF2330, I wrote
22 due to Marywood's actions, I request at
23 this stage, and then I ask -- preceding
24 number one, I ask that I immediately

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1 A. That's fine.

2 Q. My question to you --

3 A. Right.

4 Q. -- is do you feel that calling
5 these demands is inappropriate, that
6 that's not what they're -- that's not what
7 you would call them?

8 A. I don't know if the word is
9 inappropriate. A lot of people use
10 demands in negotiation, these are my
11 demands, and everybody knows that by
12 demands you mean that the demands are open
13 to negotiation.

14 Q. Okay.

15 A. So you have to qualify demands
16 by saying that it's really all or nothing.

17 Q. Okay.

18 A. And these are not all or
19 nothing demands.

20 Q. But these are demands
21 nonetheless?

22 A. Some people call them demands.
23 I would not call them demands. I don't
24 think I use the word "demands" in here.

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1 receive by December 15th, and then I go on
2 to item number one. I don't see -- help
3 me out -- if there's anything here that
4 says I'm going to stamp my feet and go
5 home if I don't get all 11.

6 Q. Is it your position that these
7 are not -- cannot -- should not be
8 characterized as demands?

9 A. They should not be
10 characterized as demands if by demands you
11 mean that it's all or nothing.

12 Q. It's however you define
13 demands.

14 A. That's how I define --

15 Q. Is it you feel that these are
16 not demands?

17 A. I believe any -- I believe
18 these are -- if by demands you mean all or
19 nothing, I will not talk about anything
20 else, I will not negotiate, this is it,
21 then I would say these are not demands.

22 Q. Okay. I'm not defining it.

23 A. Okay. I just --

24 Q. It's however you define it.

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1 Q. Okay.

2 Do you think it was reasonable
3 to require that -- to ensure the publicity
4 for each event it must include two
5 separate e-mails, they have to be approved
6 by you, sent to the complete faculty list
7 including adjuncts and the student e-mail
8 list. The e-mails will advertise the
9 upcoming FIRE event and these, probably in
10 April, evening event e-mails will include
11 the offer of free pizza. For each FIRE
12 event that the first e-mail will be sent
13 one week before the event. The remainder
14 e-mails also with complete information --

15 A. Reminder. Excuse me.

16 Q. -- will be sent 24 hours before
17 each event. Every e-mail must meet your
18 approval.

19 Is that reasonable?

20 A. Yes, and let me explain. Two
21 separate e-mails, one ahead of time so the
22 students have time to plan and then a
23 last-minute reminder. I believe that
24 aspect is reasonable. Sending e-mails

35 (Pages 134 to 137)

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1 basically costs nothing but a small amount
2 of time for somebody to compose the
3 e-mail. The free pizza business, whether
4 it's free pizza or a one cent Tootsie
5 Roll, that is obviously open to
6 negotiation from the previous discussion
7 we just had.

8 And every e-mail must meet my
9 approval, you know, one can couch an
10 e-mail announcement in terms of, let's
11 say, coloring the enthusiasm with which
12 the e-mail is sent out. So I just was
13 trying to make sure it was a fair e-mail
14 that went out. I did not say I would
15 write the e-mail. I would just say the
16 e-mail would have my approval.

17 Q. Okay.

18 And it's your position that
19 this --

20 A. Is reasonable.

21 Q. -- demand or request, whatever
22 you want to call it in number ten --

23 A. I would call it reasonable.

24 Q. -- is reasonable?

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1 A. I would call it reasonable.

2 Q. Okay.

3 Just for clarification, you did
4 not send an e-mail ahead of time other
5 than to your own class about the November
6 30th speaker, correct?

7 A. That's correct.

8 Q. And you did not send any
9 reminder e-mail before the November 30th
10 event, correct?

11 A. No. I had no access to any
12 student e-mail lists.

13 Q. Did you ask anyone to do that?

14 A. I did.

15 Q. Who did you ask?

16 A. I asked -- I believe it was Amy
17 Paciej, one of the deans, to send out an
18 e-mail announcing the event.

19 Q. And what was her response?

20 A. I can't recall her response but
21 I know that she did not send it out.

22 Q. Did you -- how did you ask Amy,
23 by e-mail?

24 A. Yes.

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1 Q. Did you ask anyone else?

2 A. I can't recall, but the e-mail
3 announcements about events like this would
4 generally come from her.

5 Q. Do you think it was reasonable
6 that requesting or demanding, whatever
7 words you want, of Marywood that by
8 sponsoring a fall 2012 appearance on
9 campus by Robert Spencer of Jihad,
10 J-I-H-A-D, Watch that Mr. Spencer, based
11 on the jihadwatch.org Web site, will be
12 willing to debate anyone regarding aspects
13 of Islam but his appearance would not be
14 contingent on the existence of a debater
15 for the other side?

16 You continue that the event
17 shall be publicized by the number of
18 posters outlined in number five and by
19 single topic e-mails sent to the faculty
20 and student e-mail lists as outlined
21 above. You continue that your friends and
22 you will hang the posters designed with
23 your approval. The opposition side in the
24 proposed debate can of course hang its own

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1 posters or participate in the poster
2 design.

3 Do you think that was
4 reasonable?

5 A. Well, yes, in the sense that
6 it's easy to be for ideas one supports.
7 It's easy to be for free speech when it
8 supports your ideas. It's hard to
9 sponsor, shall we say, a debate in which
10 one might hear two widely opposing views,
11 and as a university I think that would be
12 a -- it's a good thing to have happen to
13 have students exposed to wide range of
14 viewpoints.

15 Q. For your demand number 11,
16 there's no requirement by you that there
17 be a debater on the other side, correct?

18 A. Correct.

19 Q. So it would be possible then
20 that it would only have one side on the
21 topic, correct?

22 A. That's correct, and that's
23 because sometimes Mr. Spencer, as I
24 understand it, has had trouble getting

36 (Pages 138 to 141)

1 debaters. So if you want to present a
2 side that says red is the favorite color
3 but we must have a debater on the other
4 side for a different color, well, if the
5 other -- if the other color says I won't
6 show up at the debate, then you don't get
7 the red point of view.

8 So one way to prevent the red
9 point of view would be to have the other
10 colors refuse to show up. So I would want
11 -- the whole point of that is to have a
12 debate or a presentation of different
13 views. That was the whole point. That's
14 what I would want. I would not want a
15 one-sided presentation.

16 Q. But you didn't require two
17 different views, correct, for number 11?

18 A. I didn't require it because --
19 but I would fully support it. I would
20 even probably paid money to ensure that it
21 happened if it was a question of money.

22 Q. Did you think the university
23 was going to accept your 11 demands?

24 A. I would have been shocked and

1 pleasantly surprised if it accepted all 11
2 demands. I would say I didn't expect all
3 11 demands to be accepted, but they
4 weren't really demands in the sense of all
5 or nothing. They were negotiating let's
6 talk items.

7 Q. What did you think Marywood's
8 reaction was going to be?

9 A. I didn't know what it would be.
10 I would have been guessing on my part. I
11 could guess.

12 Q. I'm asking you at the time that
13 you drafted this, what did you think the
14 university's response was going to be?

15 A. I thought that the university
16 would admit to me that it had wrongly torn
17 down the posters with the prize money,
18 and, by the way, they did not even inform
19 me of that. They could have -- the
20 university could have simply scratched out
21 the prize announcement with a black magic
22 marker, and so I thought it was rather,
23 shall we say, bad behavior on the part of
24 the university with regard to the whole

1 posters incident.

2 I also thought that perhaps the
3 university had a way out in terms of
4 perhaps Sister Munley was, I thought at
5 the time, maybe not fully informed about
6 what had happened at the lower levels of
7 the tearing down, whether I believe at
8 some point there was a discussion that the
9 other posters that were torn down were not
10 stamped approved, which was totally wrong.
11 They were all stamped approved, but there
12 was that story out there among the
13 administration.

14 And so, therefore, if Sister
15 Munley had said to me, gee, Fred, you're
16 right, we goofed up, the posters shouldn't
17 have been torn down, we made a mistake,
18 but I can't do all these 11 things, and
19 then I would presume she should have said
20 you're right, we should reimburse you for
21 the FIRE speaker and your posters
22 expenses. We should reimburse you the
23 \$500.00 that you paid out to try to do a
24 good job for the university. I will, you

1 know, do my best to make sure that this
2 doesn't happen again, but I would really
3 not issue a public apology but I will
4 invite some more FIRE speakers to come to
5 campus next weekend.

6 And so basically if Sister Anne
7 Munley had gone that route, then she would
8 have paid me \$500.00, basically apologized
9 to me in private. She would have invited
10 FIRE speakers, say, to come to an evening
11 presentation, something like that, and I
12 could have lived with that. Of course, I
13 would have preferred, you know, a
14 full-blown let's go for some excitement on
15 campus with controversial debate but I'm
16 not unreasonable. I thought that would
17 have been a good response and a correct
18 response. If I was president, that's what
19 I would have done.

20 Q. Do you -- can you see how
21 someone would find your 11 demands to be
22 unreasonable?

23 A. I can see how somebody would
24 say that's way too much to ask for for a

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1 case like this. Yes, I can see that point
2 of view.

3 Q. Did you ultimately meet with
4 Dr. Levine regarding the posters?

5 A. Yes.

6 Q. And I believe that happened on
7 or around December 5, 2011?

8 A. Yes. I'd have to refresh --
9 yes. I sent this letter, Exhibit-8, on
10 December 2nd. Was it -- at some point I
11 was told President Munley considered and
12 will give you nothing.

13 Q. So you had a meeting with
14 Dr. Levine?

15 A. Yes.

16 Q. Who was at the meeting?

17 A. I believe it was just
18 Dr. Levine and I.

19 Q. And the meeting, just for
20 purposes of chronology, was after you sent
21 this letter, correct?

22 A. Yes. This letter is December
23 2nd, and December 5th meeting sounds
24 correct.

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1 Q. Just to refresh your
2 recollection, if you can go through your
3 stack there and pull out Exhibit-5, which
4 is the chronology of events --

5 A. Yes.

6 Q. -- that you prepared.

7 A. Okay.

8 Q. If you can flip to the Bates
9 stamp on the bottom is DEF001468.

10 A. Okay.

11 Q. You wrote those comments,
12 correct?

13 A. Comment 15?

14 Q. Yeah. It says while driving
15 home after the December 5 meeting --

16 A. Let's see.

17 Q. -- with Alan Levine.

18 Does that refresh your memory
19 of when the meeting you had with
20 Dr. Levine was?

21 A. Yeah. Let me see here. Okay.
22 So he was --

23 MR. COHEN: What Bates stamp
24 are we looking at?

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1 MS. PEET: 1468.

2 THE WITNESS: Yes. So this was
3 when I believe I had the discussion
4 with Dr. Levine about the pandering.

5 BY MS. PEET:

6 Q. Okay.

7 And I believe you testified
8 about that earlier.

9 Have we exhausted what happened
10 at that meeting with Dr. Levine and what
11 was discussed?

12 A. Yes. He brought up the
13 pandering and he said the executive
14 council had discussed it and that was --
15 pandering was a bad thing.

16 Q. Okay.

17 Anything else that was
18 discussed during that meeting?

19 A. Checking here on the dates.
20 When did -- my December 2nd letter went
21 out and so he -- let's see. I believe I
22 had met with Dr. Levine a bit earlier,
23 December 1st.

24 Q. Would that have been before you

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1 drafted the list of demands because that's
2 dated December 2nd?

3 A. That's dated December 2nd.
4 Check my chronology here.

5 Q. According to your chronology,
6 you had a meeting with him on December
7 5th. That's what you --

8 A. Yes, I understand that. Let me
9 see here. No. If you look at -- let's
10 see here. Let's see, 1461. There's a
11 December 1st e-mail where I say I'm still
12 at loss to explain for what happened.

13 Q. I'm just asking about your
14 meeting with Dr. Levine.

15 A. Yeah. I'm trying to remember
16 which meeting because I think there might
17 have been two. I'm getting a little --

18 Q. And I'm asking about the
19 meeting that you had with Dr. Levine about
20 your list of demands which was on December
21 -- sent on December 2nd, and we know you
22 met with him on December 5th.

23 A. What I did was when I -- trying
24 to recall here. I met with Alan Levine

38 (Pages 146 to 149)

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1 and I had printed out, I believe, the list
2 of demands, if you want to call them
3 demands, and Alan read that list at that
4 meeting where he first saw them, and then
5 he said would you please send them to me
6 by e-mail so that I could then send them
7 on to President Munley. And so he saw
8 that letter by hand-printed copy before he
9 saw it by e-mail.

10 Q. Okay.

11 A. And so I'm trying to -- I'd
12 have to review here to figure out exactly
13 when in the chronology --

14 Q. It's okay.

15 A. Okay.

16 Q. How did the meeting conclude?

17 A. The first e-mail with -- I'm
18 trying to --

19 Q. Meeting. I'm sorry, meeting.

20 A. Yeah. The first -- the
21 meetings were all cordial. The meeting
22 where I first showed Alan the letter he
23 said he would forward it on to Sister --
24 President Anne Munley, and we had that

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1 meeting?

2 A. Yes. I didn't expect him to
3 have any power to grant any of my wishes.

4 Q. And you think that it was the
5 president that would have the power to
6 grant those wishes, right?

7 A. Yes.

8 Q. Do you know Dr. Levine's
9 religion?

10 A. Not for a fact.

11 Q. What do you believe it to be?

12 A. I assumed he was Jewish.

13 Q. Did you assume he was Jewish
14 when you met with him in December of 2011?

15 A. I think I had always assumed
16 it, just not as any big deal.

17 ---

18 (At this time, a document was
19 marked for identification as Exhibit
20 Fagal-9.)

21 ---

22 BY MS. PEET:

23 Q. What has been placed before you
24 as Exhibit-9 seems to be an e-mail chain.

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1 pandering discussion. And so then you
2 referred me to -- that's when I told him
3 about the -- later that night I told him
4 about the Harvard professor.

5 And what page were we on for
6 that? I'm sorry.

7 Q. I'm not on a page. I was just
8 trying to refresh --

9 A. Okay.

10 Q. -- your recollection about
11 December 5th. That's all.

12 A. I'd have to review. I can't
13 recall exactly --

14 Q. Okay.

15 A. -- that exact date.

16 Q. So did the meeting conclude
17 with Dr. Levine saying please send me the
18 e-mail of the demands and I'll present
19 them to Sister Munley?

20 A. If that was the meeting when I
21 first showed him the picture, that's what
22 he said, yes.

23 Q. Okay.

24 Were you satisfied with that

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1 If you look at the first page, there are
2 e-mails between you and Dr. Jackson.

3 Do you see that?

4 A. I see. I haven't seen these
5 lately. Go ahead.

6 Q. Okay.

7 Are these in fact e-mails that
8 you and Dr. Jackson were sending each
9 other in December of 2011?

10 A. Yes, they appear to be.

11 Q. And just for the record, these
12 are -- these three pages are documents
13 that you produced to Marywood in this
14 case?

15 A. Yes.

16 Q. Okay.

17 Who is Adolf Eichmann?

18 A. He was a German in World War II
19 who was fairly low level functionary who
20 signed orders or, you know, did processing
21 sending Jews to the gas chamber and he was
22 captured by Israeli Mossad in 1960 in I
23 think -- I think it was Brazil, and there
24 was a trial in the early 1960s in Israel

39 (Pages 150 to 153)

Page 154

1 and I believe he was executed.

2 Q. Did you say he sent Jews to gas
3 chambers?

4 A. I don't know that he had the
5 power to do that but, you know, he was --
6 I don't know the exact details of what his
7 powers were but he was functioning as
8 such.

9 Q. On the top of page two, do you
10 write that Alan becomes the equivalent of
11 Adolf Eichmann? Do you see that?

12 A. Yes, I do. And I would like to
13 point out my parenthetical comment, well,
14 comma, not quite the gas chambers, comma,
15 but the same idea.

16 Q. Okay.

17 And when you say --

18 A. Meaning -- meaning simply, as I
19 just explained, that Alan Levine -- I
20 viewed him as being a functionary.

21 Q. And was Adolf Eichmann a
22 functionary of Adolf Hitler?

23 A. Yes.

24 Q. Okay.

Page 155

1 So you're -- okay.

2 And the Alan in this e-mail, is
3 that Alan Levine?

4 A. Yes.

5 Q. If you look back to the first
6 page, there's an e-mail from Dr. Jackson
7 to you. It says Eichmann slash Alan,
8 dash, get that meta out of your head
9 before it comes out at the wrong time.

10 Do you know what he meant by
11 that?

12 A. In the very top first part?

13 Q. The e-mail from --

14 A. Where I say I thought the
15 Eichmann comparison might get him to wake
16 up but maybe it can be toned down?

17 Q. I'm referring to -- if you look
18 down a little bit, there's an e-mail from
19 Dr. Jackson to you.

20 A. What time of day? Which one
21 are you looking at?

22 Q. December 2, 2011, 9:19 p.m.

23 A. Okay.

24 Q. And Dr. Jackson writes Eichmann

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1 slash Alan, dash, get that meta out of
2 your head before it comes out at the wrong
3 time.

4 Do you see that?

5 A. Yes, I do.

6 Q. What do you think he meant by
7 that?

8 A. He's saying that some people
9 have, shall we say, gut reactions to even
10 the mention of that relationship to call
11 -- if you say somebody is a -- say a
12 lackey of somebody where they do their
13 bidding because it's their job to follow
14 orders, and if the orders are not, shall
15 we say, good orders, if I -- if somebody
16 says well, that would be Eichmann-like,
17 that might be, you know, you're saluting
18 and saying yes, ma'am, I'll do what you
19 say.

20 I personally don't see any
21 connotation where if you're saying
22 somebody is Eichmann-like that they are
23 actually anti-semitic or sending Jews to
24 the gas chamber or anything at all like

Page 157

1 that. It simply means that they are doing
2 the boss's -- boss's bidding in this
3 instance, nothing --

4 Q. Do you -- do you see how if you
5 refer to someone as Alan Eichmann, how
6 they can -- how they can view that as
7 perhaps anti-semitic?

8 A. Some people might view that.
9 People view things different ways.

10 Q. Okay.

11 Do you think someone could be
12 offended if you refer to them as Alan
13 Eichmann who is in part responsible for
14 killing over six million Jews?

15 A. They could be. They could be.

16 ---

17 (At this time, a document was
18 marked for identification as Exhibit
19 Fagal-10.)

20 ---

21 BY MS. PEET:

22 Q. Do you recognize this letter?

23 A. Yes. Let me read it quickly,
24 please.

40 (Pages 154 to 157)

Page 158

1 Q. Sure.
 2 ---
 3 (At this time, the witness
 4 complies with request.)
 5 ---
 6 THE WITNESS: Okay.
 7 BY MS. PEET:
 8 Q. Okay.
 9 Do you recall receiving this
 10 letter from Dr. Levine?
 11 A. Yes.
 12 Q. What was your reaction?
 13 A. I was a little surprised and
 14 disappointed. I would say dis -- yes.
 15 Q. At the time that you received
 16 this letter, December 15, 2011, did you
 17 already have the idea of creating this
 18 video?
 19 A. No, I don't believe I did.
 20 Q. Did you have any idea what you
 21 were going to do if Marywood didn't agree
 22 to your demands?
 23 A. No. I thought about -- I
 24 didn't have any specific ideas. I thought

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1 about maybe getting FIRE involved.
 2 Q. Anything else?
 3 A. The thought crossed my mind
 4 that maybe I would contact Glenn Reynolds
 5 perhaps at Instapundit which is a big
 6 blog.
 7 Q. Anything else?
 8 A. Not that I can recall.
 9 Q. What about sitting down with
 10 Sister Munley?
 11 A. Well, I already sent her -- she
 12 already got the complete letter and I had
 13 laid everything out as totally clearly as
 14 possible. I thought the letter -- it says
 15 appears -- Alan wrote appears we have a
 16 different understanding of what
 17 transpired.
 18 I thought Marywood is not
 19 interested in finding out the truth about
 20 the posters because I thought it was quite
 21 clear and that Marywood could have
 22 investigated, you know, was Carl Oliveri
 23 not there, was the grad student who
 24 stamped them approved -- was she

Page 160

1 misinformed or not informed, you know.
 2 Was there an out? I had given all those
 3 possibilities and this to me was just
 4 saying done, President Munley is not
 5 interested in talking to you at all,
 6 period.
 7 Q. So is it fair to say you did
 8 not request a meeting with her?
 9 A. I did not request a meeting
 10 with her.
 11 Q. Did you get FIRE involved at
 12 this point?
 13 A. Well, we discussed there was a
 14 letter that went out. We -- yes, FIRE
 15 did --
 16 Q. Okay.
 17 A. -- was involved.
 18 Q. So other than -- anything other
 19 than those letters for FIRE involvement?
 20 A. I did not contact the blog or
 21 anything like that.
 22 Q. When you say the blog, would
 23 that be Instapundit?
 24 A. Yes.

Page 161

1 Q. You did not contact them?
 2 A. No.
 3 Q. Did you post on
 4 marywoodfreespeech.com about this?
 5 A. No.
 6 Q. When did you decide to create
 7 these videos?
 8 A. I don't remember the exact
 9 dates. The Downfall movie parody videos
 10 were and have been a huge event on
 11 YouTube. They're often used to get points
 12 across and usually in a humorous way. It
 13 helps attract an audience and some of the
 14 topics that are used by the videos on
 15 YouTube on Downfall are humorous, some are
 16 serious.
 17 For example, there was one that
 18 compared the New York State commissioner
 19 of education and they had his, you know,
 20 policy decisions, you know, evidenced in a
 21 Downfall YouTube video. So these are
 22 very, very popular, their own Wikipedia
 23 page, and so this is a way to maybe get
 24 the message out.

41 (Pages 158 to 161)

Page 162

1 Q. What message?
 2 A. In this case, what had happened
 3 in regard to the posters tear down
 4 incident.
 5 ---
 6 (At this time, a document was
 7 marked for identification as Exhibit
 8 Fagal-11.)
 9 ---
 10 BY MS. PEET:
 11 Q. Exhibit-11, would you agree,
 12 are e-mail communications between you and
 13 Pamela Parsons --
 14 A. Yes.
 15 Q. -- on December 14, 2011?
 16 A. Yes.
 17 Q. Okay.
 18 If you look at the bottom of
 19 the first page, it's an e-mail from you to
 20 Pam, December 13, 2011, at 6:30 p.m.
 21 Do you see that?
 22 A. Yes.
 23 Q. And you -- I -- you say I
 24 included the demand dash requests in this

Page 164

1 A. Which words?
 2 Q. Demand.
 3 A. Yes.
 4 Q. Above that Pam writes you back,
 5 and one of the things she says or
 6 questions is can you get legal advice
 7 before commencing.
 8 Do you see that?
 9 A. Yes.
 10 Q. Did you get legal advice before
 11 commencing?
 12 A. No.
 13 Q. Why not?
 14 A. I wasn't thinking of this
 15 really as a legal issue. It was just an
 16 issue I had to deal with.
 17 Q. But Pamela thought maybe you
 18 should get legal advice?
 19 A. I don't know if she thought
 20 that. She asked -- she said -- she wrote
 21 what she wrote.
 22 Q. Okay.
 23 Right above that you send her
 24 an e-mail, and one of the things you

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1 version.
 2 A. Okay.
 3 Q. In the, quote, demand letter I
 4 sent Alan Levine last week, I asked for
 5 reimbursement by the 15th, so I guess I
 6 will hang tight at least until then.
 7 Do you see that?
 8 A. Yes.
 9 May I point something out,
 10 please.
 11 Q. Sure.
 12 A. The word "demand" is in quotes.
 13 Q. Okay.
 14 Did you write the word
 15 "demand"?
 16 A. Yes.
 17 Q. And the demand letter that
 18 you're referring to that you sent to Alan
 19 Levine, is that what we've already
 20 discussed and has been marked as
 21 Exhibit-8?
 22 A. Yes, it would be.
 23 Q. And those were your words,
 24 correct?

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1 write, I did write it in a way which might
 2 suggest that I am ready to fight, open
 3 parentheses, in court perhaps, closed
 4 parentheses, period.
 5 Were you still not thinking
 6 litigation at that point?
 7 A. I was actually thinking suing
 8 in small claims court for tearing down my
 9 posters and making the publicity that way.
 10 I wasn't thinking it was any giant legal
 11 action.
 12 Q. If you read right above that,
 13 you say don't know if my brother-in-law
 14 lawyer will have time or inclination to
 15 look at this.
 16 A. Right.
 17 Q. Not his area of the law. I
 18 will run it by a University of Chicago law
 19 student to see what he thinks.
 20 Are you referring to a small
 21 claims court matter?
 22 A. No. I was just seeing if they
 23 had any ideas. I wasn't thinking of any
 24 action I was going to take.

42 (Pages 162 to 165)

Page 166

1 Q. Were you trying to prepare
2 yourself for action that might be taken
3 against you?

4 A. I didn't know. I was thinking
5 -- I was -- my brother-in-law is a good
6 lawyer. If I -- at Christmastime if I
7 said to him, gee, Jim, you know, I've
8 gotten in a brouhaha with the university
9 and if he said what happened, Fred, and I
10 told him, I showed him the e-mail thread,
11 and, you know, I don't know what -- I
12 don't know what he'd think about that. He
13 might -- he'd probably say well, you
14 know -- you know, he's too -- he wouldn't
15 want to get involved in the small stuff,
16 right, so not his area of the law. I know
17 that.

18 The University of Chicago
19 student was a former Marywood student who
20 worked heavily on free speech issues and,
21 you know, if they thought there was
22 something I should be careful of, they
23 might tell me, Fred, be careful, don't do
24 this, but I had no plans to do any --

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1 anything.

2 Q. Okay.

3 Who was the University of
4 Chicago student to whom you're referring?

5 A. Who was it? William
6 Ziegelbauer.

7 Q. Did you ever get the cartoon
8 drawn that you reference here?

9 A. Pam sketched one real rough
10 quick cartoon of a nun unidentified
11 tearing -- I can't remember if it was
12 unidentified but a nun tearing down a
13 poster from a pillar, but I didn't use
14 that in anything.

15 Q. Why not?

16 A. We were thinking of making a
17 big montage sequence, shall we say, you
18 know, cartoon showing posters being torn
19 down around campus but it was just a mere,
20 you know, quick discussion, no big plans.
21 It didn't come to any fruition.

22 Q. That cartoon that you just
23 referenced, was that what you produced
24 yesterday as a quick little video?

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1 A. It was a quick little -- it
2 just showed a picture of the pillar.

3 Q. Correct.

4 A. Yeah. We produced it recently,
5 yes.

6 MS. PEET: Why don't we take a
7 break here.

8 ---

9 THE VIDEOGRAPHER: We're now
10 off the record. The time is 12:46
11 p.m.

12 ---

13 (At this time, a luncheon
14 recess was taken.)

15 ---

16 THE VIDEOGRAPHER: We are now
17 on the record. The time is 1:33 p.m.

18 ---

19 BY MS. PEET:

20 Q. Mr. Fagal, are you ready to
21 continue?

22 A. Yes, I am.

23 Q. Just a reminder, you're still
24 under oath, so all of the testimony you

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1 give to the remainder of this deposition
2 must be truthful, accurate, and complete.

3 Do you understand that?

4 A. Yes.

5 ---

6 (At this time, a document was
7 marked for identification as Exhibit
8 Fagal-12.)

9 ---

10 BY MS. PEET:

11 Q. Mr. Fagal, what has been placed
12 before you is a two-page e-mail exchange
13 between you and Pam Parsons in December of
14 2011.

15 Do you see that?

16 A. Yes.

17 Q. Do you agree that that's what I
18 purported to be is what it is?

19 A. Yes.

20 Q. The top e-mail seems to be from
21 Pam to you.

22 A. Yes.

23 Q. Do you see that?

24 A. Uh-huh.

43 (Pages 166 to 169)

Page 170

1 Q. And then in the middle there's
2 just two lines that seem to be from you to
3 Pam, and then the bottom is an e-mail from
4 Pam to you.

5 Do you see that?

6 A. Yes.

7 Q. What are you and Pam
8 discussing?

9 A. I'm trying to think about how
10 if I didn't get a response from Marywood
11 about my 11 requests and some sort of
12 negotiation about going public in some
13 sense to a certain extent with what
14 happened, and so we were talking about
15 maybe some sort of cartoon poster.
16 Nothing came of it but...

17 Q. Okay.

18 ---

19 (At this time, a document was
20 marked for identification as Exhibit
21 Fagal-13.)

22 ---

23 BY MS. PEET:

24 Q. Exhibit-13 is an e-mail from

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1 like that, so it's about the posters tear
2 down.

3 Q. Okay.

4 If you turn -- keep on the
5 first page. The end of the fourth
6 paragraph. It's a very short paragraph.
7 It says I think Alan Levine is deep down
8 actually in my corner but no one but the
9 president has any real power.

10 Do you see that?

11 A. No, I don't yet.

12 Q. On the first page.

13 A. Oh, the first -- not the
14 Marywood's shame but before that?

15 Q. Yeah.

16 A. Okay.

17 Q. The cover e-mail.

18 A. Yeah, uh-huh. Fourth
19 paragraph; one, two, three -- yeah.

20 Q. I think Alan Levine is deep
21 down actually in my corner but no one but
22 the president has any real power.

23 Do you see that?

24 A. Yes.

Page 171

1 you to William Ziegelbauer dated
2 December 15, 2011, with attachments; is
3 that correct?

4 A. Yes. I believe he pronounces
5 his name Ziegelbauer, but that's okay,
6 yes.

7 Q. I apologize.

8 Is this the person you
9 discussed earlier that's a University of
10 Chicago law student and a previous
11 Marywood University student?

12 A. He was at the University of
13 Chicago as a law student at the time, yes.

14 Q. And what is this first
15 attachment? If you turn to the second
16 page, it says Marywood's shame, November
17 2000 -- November dash December 2011, and
18 it says something about Professor Fagal
19 again under attack.

20 What is this?

21 A. This would be a draft of an
22 explanation as to what happened with --
23 you know, going along with the timeline
24 about being called a panderer and stuff

Page 173

1 Q. Do you still agree with that?

2 A. Do I still agree with that?

3 Q. Uh-huh.

4 A. Clarify the -- do you mean do I
5 agree today that Alan Levine is in my
6 corner? Is that the question?

7 Q. Yes.

8 Do you still agree with the
9 statement that you wrote here?

10 A. No, not as much as I did then.

11 Q. And what changed that position?

12 A. In discovery I saw some e-mails
13 that Alan Levine was involved with that
14 implied that he wasn't happy with the
15 posters, the speaker coming to campus and
16 things like that.

17 Q. Okay.

18 The next paragraph says in
19 bold, so unless I have grounds to sue the
20 bastards.

21 Do you see that?

22 A. Uh-huh.

23 Q. Who are the bastards?

24 A. That would be the people who

44 (Pages 170 to 173)

Page 174

1 tore down my posters.

2 Q. Were you referring to Marywood
3 University?

4 A. It was general statement that I
5 was angry and I wanted to do something
6 about it. It wasn't a real intention
7 unless I have grounds, a violation of
8 contract. I mean --

9 Q. Well, you --

10 A. -- as a professor, what rights
11 did I have? So --

12 Q. Well, you sued Marywood for
13 breach of contract?

14 A. Yes.

15 Q. So is Marywood University the
16 bastards in this e-mail?

17 A. At least some people affiliated
18 with it.

19 Q. Okay.

20 Who are the bastards?

21 A. If I had to name names, it
22 would probably be -- I don't know -- Carl
23 Oliveri. I didn't know who was involved.
24 I knew that the executive council was

Page 176

1 A. Carl Oliveri I was presuming.

2 I think anybody who did not pursue -- Alan
3 Levine I don't think pursued -- gave up
4 pursuing -- as far as I could tell from
5 his letter, gave up pursuing what happened
6 with the posters tear down. This is
7 basically an offhanded comment.

8 Q. Okay.

9 I'm just trying to have --

10 A. Okay.

11 Q. -- you identify who you
12 think --

13 A. That's fine.

14 Q. Did you exhaust that?

15 A. Yeah. I was assuming here that
16 Anne Munley was not directly involved in
17 the, you know, initial posters tear down
18 business. So I was assuming it was at a
19 little lower level, but I didn't -- I
20 didn't know for sure. That's why I was
21 trying to give her -- give Alan Levine an
22 out to say that there was
23 miscommunication.

24 Q. You say here all I can do is

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1 somehow involved but I didn't know to what
2 extent and who did what. For instance, I
3 didn't know what any individual felt or
4 was -- you know, who was the ringleader,
5 for example. I did not know.

6 Q. Okay.

7 Do you think everyone in the
8 executive council is a bastard?

9 A. That would depend on the term
10 "bastard". I would say the traditional --
11 I would have no idea. It depends on
12 the --

13 Q. It's your wording, so however
14 you interpret it.

15 A. Yeah. My wording here is not
16 the son of an unmarried mother or daughter
17 of an unmarried mother bastard but just a
18 general term that people use all the time
19 when you say those people who, you know,
20 did me wrong or, you know, the team that
21 beat my team, you know.

22 Q. Okay.

23 So who are the people that you
24 believe did you wrong, Carl Oliveri?

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1 shame the hell out of them and hope a
2 little bad publicity.

3 A. Uh-huh.

4 Q. Who were you trying to shame
5 the hell out of?

6 A. Well, that would be the
7 administrators and, in this case, it would
8 be Anne Munley. She's in charge tearing
9 down a free speech poster.

10 Q. The poster wasn't for free
11 speech, correct? It was a poster
12 advertising a speaking engagement,
13 correct?

14 A. Speaking engagement by somebody
15 from FIRE, and one of FIRE's main charges
16 is free speech on college campuses.

17 Q. No one from the university or
18 administration told you that the reason
19 why the posters were removed were because
20 of it was associated with FIRE or free
21 speech, correct?

22 A. They did not tell me that.

23 Q. If you go down another
24 paragraph, you -- the last sentence says I

45 (Pages 174 to 177)

Page 178

1 guess they will have to take comfort in
 2 schadenfreude.
 3 What is schadenfreude?
 4 A. Where is the -- what line is
 5 it?
 6 Q. After you say hit them in the
 7 solar plexus. I guess they will have to
 8 take comfort in schadenfreude.
 9 A. Let's see. So unless -- I'm
 10 looking in the bold.
 11 Now how many lines down are we
 12 going?
 13 Q. The next paragraph --
 14 A. The next paragraph.
 15 Q. -- starts to get --
 16 A. Okay.
 17 Q. -- info into the hands of
 18 parents.
 19 A. Yes. Schadenfreude, take
 20 pleasure in the agony of others. I
 21 believe that's the definition of that
 22 term.
 23 Q. So I guess they will have to
 24 take comfort in the -- in the agony of

Page 180

1 marked for identification as Exhibit
 2 Fagal-14.)
 3 ---
 4 BY MS. PEET:
 5 Q. Do you agree that this is an
 6 e-mail from you to Pam Parsons dated
 7 December 19, 2011?
 8 A. Yes.
 9 Q. And, again, in this e-mail you
 10 are talking to Pam about a possible comic
 11 or cartoon about this FIRE incident,
 12 correct?
 13 A. Correct.
 14 Q. And you talk about maybe
 15 showing Sister Munley maybe wearing a
 16 guarder belt with a little dog and the
 17 female lawyer Paterson.
 18 Are you referring to Sister
 19 Mary Theresa Paterson?
 20 A. Is she a nun?
 21 Q. I said Mary Theresa Paterson.
 22 She's not a nun.
 23 A. Right.
 24 Q. Okay.

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1 others is what --
 2 A. Yes.
 3 Q. -- you meant to write?
 4 A. Uh-huh.
 5 Q. Okay.
 6 And whose agony were you trying
 7 to take comfort in?
 8 A. Let me read the paragraph here.
 9 Q. Sure.
 10 A. That would be the
 11 administration. Here I was thinking
 12 about -- again, just thinking about
 13 passing out fliers to parents as they
 14 drove their children to the dorms and say
 15 here, here's what's going on at the
 16 college, at the university.
 17 Q. As of December 15, 2001(sic),
 18 have you decided to create the Hitler
 19 videos?
 20 A. I don't think so. I don't see
 21 anything here. I'm not sure when I got
 22 that idea.
 23 ---
 24 (At this time, a document was

Page 181

1 Is that who you're referring
 2 to?
 3 A. Let's see, yes.
 4 Q. Okay.
 5 And you have a toy dog labeled
 6 CO or Oliveri, so the dog would be labeled
 7 for Carl Oliveri?
 8 A. Yes.
 9 Q. Okay.
 10 And the dog lifts his leg to
 11 pee on a poster which is on the ground?
 12 A. Yes.
 13 Q. The poster will be a little
 14 crumpled and torn at the lying base of a
 15 tree and the only word you can see is
 16 FIRE, so the dog is pissing on FIRE to put
 17 it out; is that right?
 18 A. Yes.
 19 Q. Okay.
 20 And then you -- couple
 21 paragraphs later you say to Pam but the
 22 next best thing -- strike that.
 23 You say meanwhile, I'm
 24 beginning to learn how to use Windows

46 (Pages 178 to 181)

Page 182

1 Movie Maker just well enough so I can make
2 a Hitler parody video.

3 Do you see that?

4 A. Yes, I do.

5 Q. So is it fair to say around
6 December 19th you at least have the idea?

7 A. Yes.

8 Q. With luck, this will all come
9 together and the semester off to a rousing
10 start.

11 Do you see that?

12 A. Yes.

13 Q. What do you mean by rousing
14 start?

15 A. Get students on campus
16 interested in the issue of free speech and
17 say what the heck's going on at this
18 university.

19 Q. Okay.

20 If no one is roused, at least
21 I, in parentheses we with your help,
22 closed parentheses, will have tried and at
23 least caused some discomfort.

24 Do you see that?

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1 A. If by discomfort that
2 encouraged them to change policy, then
3 that would be okay.

4 - - -

5 (At this time, a document was
6 marked for identification as Exhibit
7 Fagal-15.)

8 - - -

9 BY MS. PEET:

10 Q. Okay.

11 This is a packet of documents.
12 It starts off with an e-mail with various
13 attachments.

14 Do you see this?

15 A. Yes.

16 Q. Now, the e-mail on the first
17 page where it says forwarded message, it's
18 from Fred Fagal to your Gmail account
19 dated January 13, 2012.

20 Do you see that?

21 A. Yes, I see that.

22 Q. Okay.

23 So you're sending an e-mail
24 from your Yahoo account to your Gmail

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1 A. Yes.

2 Q. Who were you trying to cause
3 discomfort to?

4 A. The administration, hoping they
5 would change their policies.

6 Q. And, again, this is all about
7 the poster?

8 A. Yes.

9 Q. Okay.

10 You write this is all good,
11 ideally policy changes, but next best is
12 to make them pay something, and then in
13 bold italicized, at least cause some
14 discomfort.

15 A. Uh-huh.

16 Q. Again, discomfort to Marywood
17 administration?

18 A. Yes.

19 Q. And that would be the purpose
20 at least of this video?

21 A. The main purpose of the video
22 would be to change policy.

23 Q. And another purpose was to
24 create discomfort?

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1 account, correct?

2 A. Okay, yeah.

3 Q. And then it says dear Marywood
4 University faculty colleague.

5 Do you see that?

6 A. Uh-huh.

7 Q. Are there -- are you blind
8 copying people on this e-mail?

9 A. I don't recall if it was blind
10 copying or I had about -- I had access to
11 e-mail addresses and I was able to paste a
12 certain number of them in to send out as a
13 batch e-mail. So these are faculty
14 members now, so that's what I did.

15 Q. Okay.

16 So you agree you sent out this
17 e-mail to Marywood faculty members,
18 correct?

19 A. Yes.

20 Q. Did you send it to the faculty
21 members at their personal e-mail addresses
22 or at their Marywood e-mail addresses?

23 A. Whatever e-mail addresses I
24 had, so it was probably mixed perhaps. I

47 (Pages 182 to 185)

Page 186

1 don't know.
 2 Q. So for at least some faculty,
 3 it went to their Marywood e-mail address?
 4 A. That's correct.
 5 Q. Did you send it to any
 6 students?
 7 A. Geri Smith might have gotten a
 8 copy because she was intimately involved.
 9 Q. And she would have been a
 10 student, correct?
 11 A. She would have been a student.
 12 I --
 13 Q. Would you have sent it to Geri
 14 at her personal e-mail address or at her
 15 Marywood e-mail address?
 16 A. Personal, I believe.
 17 Q. Do you know one way or the
 18 other?
 19 A. I'm not sure.
 20 Q. So it's possible you sent it to
 21 her at her Marywood e-mail address?
 22 A. I could give you a probability.
 23 Q. But you'd be guessing?
 24 A. But I'd be guessing.

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1 Q. Okay.
 2 So it's possible one way or the
 3 other?
 4 A. It's possible one way or the
 5 other.
 6 Q. Okay.
 7 Where were you when you sent
 8 this e-mail?
 9 A. I don't know for sure.
 10 Q. If it helps, it's 2:31 p.m. on
 11 a Friday in January.
 12 A. Right. So either -- I'm not
 13 sure when my last class was. It takes me
 14 about two hours to drive home. So if my
 15 last class was at -- ended at 11:50, you
 16 know, it's possible I could have sent this
 17 from home. It's possible I could have
 18 sent this from my office.
 19 Q. Is your office at Marywood
 20 University on the campus?
 21 A. Yes. It's also possible I did
 22 not use the Marywood, you know, Wi-Fi or
 23 cable.
 24 Q. And do you know one way or the

Page 188

1 other?
 2 A. I'm not sure. At the time, I
 3 could tell you I had a tether program on
 4 my computer and it was working pretty well
 5 with my cell phone to get Internet access,
 6 and sometimes I would -- so I would use
 7 that sometimes in my office also.
 8 Q. Okay.
 9 As we sit here today, do you
 10 know one way or the other whether you
 11 used --
 12 A. No.
 13 Q. -- a tether? Okay.
 14 Just to make sure we're clear,
 15 this right here is the e-mail that you
 16 sent to members of Marywood community
 17 including the two hyperlink videos that
 18 you created, correct?
 19 A. I'll say no. Community -- I
 20 would say faculty.
 21 Q. Well, Geri Smith is not
 22 faculty, correct?
 23 A. True.
 24 Q. Okay.

Page 189

1 Did you post -- did you create
 2 the Hitler videos?
 3 A. Yes.
 4 Q. Did you post them on YouTube?
 5 A. Yes.
 6 Q. Were they publically available
 7 or did you need to enter a password to
 8 view the videos?
 9 A. No password. They were
 10 publically available.
 11 Q. Did you have to receive your
 12 e-mail in order to view the videos or
 13 could anyone have viewed those videos?
 14 A. Anyone could have viewed them.
 15 The question is would they have found them
 16 without the information.
 17 Q. Okay.
 18 But they did not need to be
 19 invited to watch the videos, correct?
 20 A. Correct.
 21 Q. Did anyone help you draft this
 22 e-mail?
 23 A. Draft this e-mail, no.
 24 Q. Okay.

48 (Pages 186 to 189)

Page 190

1 You write towards the bottom,
2 it says based on the evidence.

3 Do you see that?

4 A. Yes.

5 Q. I expect most of you, if only
6 in private, will agree the Marywood
7 administration, real people here, not an
8 abstraction, exhibited egregious,
9 despicable, contemptible behavior.

10 What's the behavior you're
11 talking about here?

12 A. Tearing down my posters.

13 Q. And when you write this
14 poisoned and considered, exclamation mark,
15 behavior reflects badly on everyone
16 associated with Marywood, is that again
17 referring to the poster issue?

18 A. Yes.

19 Q. Okay.

20 If you turn to the second page,
21 you have number three. You talk about the
22 letter that you sent to Dr. Levine dated
23 December 5th that we already talked about
24 earlier today.

Page 191

1 Do you remember that?

2 A. Yes.

3 Q. And you mention in this twice
4 that you refer to these as demands.

5 Do you see that?

6 A. Yes, but I would note there's a
7 question mark after demands and the first
8 word is "requests". You see --

9 Q. It says requests, open parens,
10 demands, question mark, end parens,
11 correct?

12 A. Yes.

13 Q. And then the second demand
14 doesn't have a question mark and it's not
15 in quotation marks, correct?

16 A. Correct.

17 Q. Okay.

18 Then if you go down a little
19 bit, you say Corynne McSherry, an attorney
20 specializing in intellectual property
21 stated, and then she said something about
22 the Downfall movie.

23 Do you see that?

24 A. Let's see. I'm looking.

Page 192

1 Q. It starts --

2 A. Yes, I see that.

3 Q. Did you reach out or speak with
4 Corynne McSherry?

5 A. No.

6 Q. Did you speak to any
7 intellectual property lawyer?

8 A. No.

9 Q. Did you ever get approval from
10 anyone to use the Downfall movie?

11 A. No.

12 Q. Next paragraph, you talk about
13 comments that you got from pre-release
14 viewers.

15 Do you see that?

16 A. Yes.

17 Q. Who are they?

18 A. Rod Carveth I know saw them.

19 What's his name? Let's see. Bill

20 Ziegelbauer saw them. I believe Geri

21 Smith saw them. I'm trying to remember.

22 I'm drawing a blank, the name of the man

23 in our department who taught some

24 economics after I left, I think. He saw

Page 193

1 them. Pam Parsons saw them. I believe my
2 dental hygienist saw them. I can't
3 remember anybody else right now.

4 Q. Okay.

5 By the way, did you pay Geri
6 Smith to hang up the posters?

7 A. No.

8 Q. Did you pay anyone to hang up
9 the posters?

10 A. Yes.

11 Q. Who did you pay?

12 A. I can't remember his name. A
13 student in my -- I believe it was 12:00
14 economics class.

15 Q. How much did you pay him?

16 A. I believe it was \$5.00.

17 Q. How long did it take him?

18 A. I don't know.

19 Q. Was that approved by Marywood
20 University?

21 A. Was what approved by Marywood
22 University?

23 Q. The payment to a student.

24 A. No.

49 (Pages 190 to 193)

Page 194

1 Q. You include various comments
2 from your -- the pre-release viewers. One
3 of the comments is in quotations, it was
4 nice knowing you, Fred.
5 A. Yes.
6 Q. Who said that?
7 A. Again, I'm drawing a blank on
8 the name. I know -- I know the name. He
9 worked in our social science department
10 but he saw the videos and -- Larry Walsh
11 is his name, so that's his comment.
12 Q. Okay.
13 Fair to say that he thought it
14 was not a good idea?
15 A. Yes. Well, in terms of --
16 Q. What it can do for your
17 career --
18 A. What it could do for my
19 career --
20 Q. -- at Marywood?
21 A. -- at Marywood.
22 Q. Was he trying to say that
23 perhaps this would be the end of your
24 career at Marywood?

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1 A. I think he was trying to say
2 that, yes.
3 Q. Okay.
4 Who's Rod Carveth?
5 A. Former professor at Marywood.
6 Q. In January of 2012, was
7 Mr. Carveth a professor at Marywood?
8 A. No.
9 Q. Do you remember -- do you know
10 the name of your dental hygienist that you
11 sent it to?
12 A. Yes.
13 Q. What's her name?
14 A. Kim Mingess(ph).
15 Q. Why did you send it to her?
16 A. Because I had a dentist
17 appointment for my checkup and I had a
18 tooth cleaning. I saw my dentist that
19 same day, and so I was talking with my --
20 my dentist asked me how things are going
21 and I told him the quick story, and Kim
22 listened. She seemed interested, so I
23 said I'll send you a copy of the video.
24 Q. Did you send it to your dentist

Page 196

1 as well?
2 A. No.
3 Q. If you can go to the next page,
4 there are two hyperlinks to YouTube.
5 Are those the videos? If I
6 would click on link to video number one --
7 A. Uh-huh.
8 Q. If I clicked on that, would
9 that direct me to YouTube and direct me to
10 your video?
11 A. When?
12 Q. In January of 2012.
13 A. Yes.
14 Q. If I clicked on the link to
15 video number two, would that direct me to
16 YouTube in January 2012 with your video?
17 A. Yes.
18 Q. You then say a few colleagues
19 concerned for my welfare have told me they
20 fear the administration will try and fire
21 me over this.
22 Who are those few colleagues?
23 A. Larry Walsh was one of them. I
24 can't right now remember who the other one

Page 197

1 was.
2 Q. Is it possible there were more
3 since you wrote a few colleagues?
4 A. We're talking two or three
5 here. It may be, not many.
6 Q. Okay.
7 You say -- and, again, these
8 are pre-release viewers, correct?
9 A. Yes.
10 Q. Then you say one colleague says
11 perhaps I should have asked for an
12 appointment with President Munley and made
13 a final appeal, that is I should have
14 pursued every last ditch channel possible.
15 You testified you did not do
16 that, correct?
17 A. That's correct. I did not
18 pursue an appointment with Professor
19 Munley -- or President Munley.
20 Q. And what -- who -- what
21 colleague was the one that suggested you
22 do that?
23 A. I don't know for sure.
24 Q. Okay.

50 (Pages 194 to 197)

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Page 200

1 Who do you think it is?
 2 A. I think it was Larry Walsh but
 3 I wouldn't testify to that.
 4 Q. Okay.
 5 Then you said I did not want to
 6 go into such a meeting and in essence have
 7 as the only new point to raise, quote, a
 8 blackmail, end quote, threat to go public
 9 as I do here and in the videos.
 10 Do you believe these videos are
 11 blackmail?
 12 A. No.
 13 Q. Okay.
 14 You say if the risk to me is
 15 there, it is there, semicolon, and if the
 16 worst does come to pass, I will have to
 17 battle as best as I can with the support
 18 of family, and friends, and colleagues,
 19 and perhaps concerned outsiders.
 20 What was the worst does come to
 21 pass? Would that be your termination of
 22 employment from Marywood?
 23 A. Yes.
 24 Q. So you realized that that was a

1 coolcat@hotmail.com, and send it from
 2 anywhere but Marywood.
 3 Do you see that?
 4 A. Yes, I do.
 5 Q. And that's because Marywood has
 6 a computer policy, correct?
 7 A. Correct.
 8 Q. If you turn to the next page
 9 very much towards the end, it is
 10 transparently obvious Marywood University
 11 is discriminating against Professor Fagal;
 12 Your Honor, I rest my case.
 13 Do you see that?
 14 A. Yes.
 15 Q. So do you believe you're -- you
 16 were being discriminated against?
 17 A. I don't know that -- I'm not
 18 sure how we define the word
 19 "discriminating" here.
 20 Q. You wrote this, right?
 21 A. Yes, I did.
 22 Q. Okay.
 23 A. I believe that at the time that
 24 they were -- the administration was

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Page 201

1 possible alternative when you posted these
 2 videos?
 3 A. I had been warned that it might
 4 be, yes.
 5 Q. And you understood that by
 6 doing this, this might be the end of your
 7 employment with Marywood?
 8 A. I understood that it was a
 9 risk.
 10 Q. Okay.
 11 You then say, in all caps,
 12 beware, dash, according to page 86 of the
 13 faculty handbook, you then quote there are
 14 no specific laws, comma, rules, comma, or
 15 regulations that protect the privacy of a
 16 user's files, comma, electronic mail
 17 messages, comma, or any other information
 18 retrieved as a result of person's session
 19 on the Marywood system, period, end quote.
 20 A. Yes.
 21 Q. You then say thus, if you
 22 e-mail me and want to protect yourself,
 23 you might best use a backup e-mail address
 24 such as your old youthful one,

1 perhaps looking to interfere with things I
 2 might do on campus that they didn't like.
 3 Q. Okay.
 4 Well, you wrote it is
 5 transparently obvious --
 6 A. And so I would say -- yeah.
 7 And so I would say that based -- based on
 8 my recounting of the posters story and the
 9 pandering phrase before that, when
 10 Marywood itself was giving out Visa cards
 11 and whatnot at events for people to come
 12 to class that they were discriminating
 13 against me as opposed to other professors
 14 who would send students to an evening
 15 class where students could get a prize or
 16 food.
 17 Q. Okay.
 18 Do you believe you were being
 19 discriminated against?
 20 A. Yes, I did.
 21 Q. Based on what protective
 22 status?
 23 A. I was not considering this as a
 24 legal phrase.

51 (Pages 198 to 201)

Page 202

1 Q. Okay.
 2 You didn't sue for
 3 discrimination, correct?
 4 A. No.
 5 Q. Did you -- are the videos still
 6 posted on YouTube?
 7 A. No.
 8 Q. Why not?
 9 A. Why not?
 10 MR. COHEN: Without disclosing
 11 any attorney-client communication.
 12 THE WITNESS: What did you say
 13 there?
 14 MR. COHEN: I said without
 15 disclosing any attorney-client
 16 communication.
 17 THE WITNESS: Without
 18 disclosing any attorney-client
 19 communication.
 20 It was just a gesture to take
 21 them down. They -- I guess they had
 22 served their purpose. I made
 23 certainly enough of a point to get
 24 suspended and termination

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1 recommended.
 2 BY MS. PEET:
 3 Q. What purpose did they serve?
 4 A. What purpose did the videos
 5 serve? Is that --
 6 Q. You said they served their
 7 purpose, so I'm saying what purpose did
 8 they serve.
 9 A. They publicized the posters
 10 events.
 11 Q. Did you post them on anything
 12 other than YouTube?
 13 A. No.
 14 Q. When did you take them off of
 15 YouTube?
 16 A. I can give an approximate date.
 17 I would say it was around the end of
 18 February 2012.
 19 Q. We're going to watch the
 20 videos.
 21 ---
 22 (At this time, videos were
 23 played.)
 24 ---

Page 204

1 BY MS. PEET:
 2 Q. Those videos you created?
 3 A. Yes.
 4 Q. Anyone help you?
 5 A. Yes.
 6 Q. Who?
 7 A. Bill Ziegelbauer helped a
 8 little bit.
 9 Q. Anyone else?
 10 A. No.
 11 Q. As we sit here today, do you
 12 have any remorse for doing that?
 13 A. I remorse that I lost my job.
 14 Q. Do you have any remorse for
 15 creating those videos and depicting Sister
 16 Anne Munley as Adolf Hitler who killed six
 17 million Jews?
 18 A. I would say that instead of
 19 depicting Anne Munley as Hitler -- in
 20 other words, think of Anne Munley doing
 21 Hitler stuff in the 1930s or '40s as being
 22 -- let's say a newsreel. You took the
 23 newsreel and you superimposed Anne Munley
 24 into that newsreel, then Anne Munley would

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1 be portraying Hitler.
 2 In this case, it's more a
 3 question of an actor dressed as Adolf
 4 Hitler portraying Anne Munley, and under
 5 her direction some fascist type
 6 activities, namely tearing down posters,
 7 were done; therefore, the satire parody.
 8 Absolutely no intention to cause anyone to
 9 think that -- and I don't think anyone
 10 would think that I was in any way implying
 11 that Anne Munley would do horrible things
 12 like Hitler did in terms of killing six
 13 million Jews.
 14 Q. In the video, there's an actor
 15 obviously portraying Adolf Hitler?
 16 A. Yes.
 17 Q. Is that Sister Munley in the
 18 video?
 19 A. He is portraying Sister Munley,
 20 again.
 21 Q. And other members of Marywood's
 22 administration, they're being depicted as
 23 members of the Nazi regime, correct?
 24 A. Mostly in a vague

52 (Pages 202 to 205)

Page 206

1 unidentifiable sense.

2 Q. Are they being identified as
3 members of the Nazi regime?

4 A. No, because I would say again
5 that members of the Nazi regime are
6 portraying the Marywood personnel.

7 Q. So the members of the Nazi
8 regime are various members of Marywood
9 administration, correct, in your video?

10 A. The point of the satire is
11 to --

12 Q. That's not my question.

13 A. Okay. Say it again.

14 Q. Strike as nonresponsive.

15 A. Okay.

16 Q. This is a video --

17 A. Yes.

18 Q. -- correct?

19 A. Correct.

20 Q. And the original video depicts
21 Adolf Hitler and members of the Nazi
22 regime, correct? They are actors
23 nonetheless because --

24 A. The video Downfall -- the

Page 208

1 A. I would have to measure that
2 answer in hours and I would have to
3 estimate. I'd have to think to come up
4 with a good answer.

5 Q. Okay.

6 A. Many hours.

7 Q. Many?

8 A. Yes.

9 Q. More than 10?

10 A. Yes.

11 Q. More than 20?

12 A. Yes.

13 Q. More than 30?

14 A. Probably.

15 Q. More than 40?

16 A. Probably not.

17 Q. Did you ever work on it in your
18 office on campus?

19 A. No.

20 Q. Did you only work on it in your
21 home?

22 A. Yes.

23 Q. There's someone in the video
24 that's spelled L-E-V-I-N-E.

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1 Downfall movie depicts actors as members
2 of the Nazi regime.

3 Q. Okay.

4 Various members of the Nazi
5 regime in the video are various members of
6 Marywood administration, correct, in your
7 video?

8 A. In my video, those actors are
9 standing in for Marywood personnel.

10 Q. When did you start creating
11 these videos?

12 A. Right around that December -- I
13 was learning how to use the software and
14 whatnot. Somewhere around December 20th,
15 21st, just before Christmas.

16 Q. I'm not sure you responded to
17 the question, so if you did, my apologies.

18 But as we sit here today, are
19 you remorseful that you did that? And by
20 that, I mean creating these two videos.

21 A. No.

22 Q. Okay.

23 How long did it take you to
24 create them?

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1 A. Correct.

2 Q. Is that supposed to be Alan
3 Levine?

4 A. Yes and no.

5 Q. Did you change his name?

6 A. Yes.

7 Q. Why did you do that?

8 A. I wanted to make it be a French
9 name, Levine, that's why I emphasized the
10 V-I-N-E to make it clear that it was
11 nothing at all about what -- some people
12 might say Levine was a Jewish name, and
13 that's -- I wanted to make it clear that I
14 was not affiliating Alan Levine with any
15 connotation.

16 Q. Well, do you think people would
17 be offended if they saw a Hitler movie and
18 a Jewish person was a member of a Nazi
19 regime or depicted as a member of a Nazi
20 regime?

21 A. I realize that some people
22 could be offended and have the right to be
23 offended.

24 Q. Do you understand how people

53 (Pages 206 to 209)

Page 210

1 that watch that video could be offended?

2 A. That's -- I can't under -- I
3 mean I can understand that they are. I
4 don't understand in the context here why
5 they would be.

6 Q. Did you watch those videos?

7 A. Yes, I did.

8 Q. Okay.

9 A. Uh-huh.

10 Q. And you don't see how someone
11 that watches that could be offended by
12 what you just did?

13 A. I do understand that they could
14 be offended.

15 Q. For the people that watched it
16 pre-release, how did they get access to
17 it?

18 A. Some I showed on my laptop and
19 a few people I e-mailed low quality video
20 files.

21 Q. Where did you e-mail them?

22 A. Can you rephrase the question?

23 Q. Where was it that you -- how
24 was it that you e-mailed it to them? Was

Page 212

1 Q. The rape part?

2 A. A substory.

3 Q. Yeah.

4 A. There was no rape.

5 Q. So the rape part was meant to
6 be comical?

7 A. The rape part was meant to be
8 comical.

9 Q. Okay.

10 When you talk about the hot
11 young pretty thing --

12 A. Excuse me. Can I amplify a
13 little bit?

14 There was no rape. There was
15 some supposed humorous non-existent plot
16 to have the Fagal character be seduced and
17 then claim rape. So there was never a
18 rape, and of course there was never such a
19 plot, and there was never such a
20 seduction, and I don't think anybody would
21 have thought that to be the case.

22 Q. Do you think when someone is
23 watching this video and they're talking
24 about rape, do you think someone can get

Page 211

1 it to their personal e-mail accounts or to
2 their Marywood e-mail accounts to those
3 that are affiliated with Marywood?

4 A. I don't recall e-mailing it to
5 anybody at Marywood -- at a Marywood
6 account.

7 Q. For the pre-release, correct?

8 A. For the pre-release.

9 Q. You talk in your video about
10 rape.

11 Are you suggesting that they
12 would try and frame you and have you
13 seduce a young woman and then have that
14 person call rape and then so they can fire
15 you? Is that what you were implying?

16 A. No.

17 Q. What were you implying when you
18 were talking rape?

19 A. I wasn't implying anything.

20 Q. Okay.

21 A. It was a humorous satire part
22 of the video.

23 Q. The rape --

24 A. A sub --

Page 213

1 offended by that or think it's
2 inappropriate?

3 A. Anybody could be offended by
4 anything.

5 Q. Including these videos,
6 correct?

7 A. If they choose to be.

8 Q. The hot young pretty thing that
9 you're referencing, would that be
10 Dr. Levine's wife?

11 A. What was the exact quote? I
12 don't know if that's the exact quote. I
13 have the -- we had -- I had the scene by
14 scene.

15 Q. Well, since you mention it, we
16 have the scene by scene as well.

17 A. Where I made comments in each
18 scene.

19 ---

20 (At this time, a document was
21 marked for identification as Exhibit
22 Fagal-16.)

23 ---

24 BY MS. PEET:

54 (Pages 210 to 213)

Page 214

1 Q. First off, what has been marked
2 as Exhibit-16, are these the frames from
3 the video that we just showed?

4 A. They certainly appear to be.

5 Q. Okay.

6 A. Very grainy, but yes.

7 Q. If you flip to DEF136, it's
8 towards the end. Some member of the Nazi
9 regime slash Marywood administrator is
10 saying so you wanted a hot young thing,
11 now you pay.

12 Do you see that?

13 A. Yes, I do.

14 Q. And they're directing this to
15 the character that's portraying
16 Dr. Levine, correct?

17 A. Yes.

18 Q. And is that referring to --
19 that hot young thing, would that be
20 Dr. Levine's wife that you're referring
21 to?

22 A. Yes.

23 Q. Do you think Dr. Levine might
24 find that offensive?

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1 his one percent kids need money. That's a
2 joke reference to the Occupy Wall Street
3 movement that was going on at the time,
4 and so that I would say makes this, you
5 know, be a joke.

6 And the next scene where you
7 say so you wanted a hot young thing, now
8 you pay, you know, there's Hot in
9 Cleveland, the television show that was
10 very popular at the time. The term "hot"
11 is a very general term. It means, you
12 know, attractive.

13 So could Dr. -- your question
14 is could Dr. Levine be offended? He could
15 be if he wanted to.

16 Q. Do you think this might be
17 offensive to Dr. Levine's second wife?

18 A. I personally don't see why it
19 would be.

20 Q. Have you ever posted anything
21 else on YouTube about Marywood University?

22 A. No.

23 Q. Did you ever consult with an
24 attorney about this video before you

Page 215

1 A. I don't know whether he would.
2 This is satire comedy parody. If I may
3 refer to the previous scene, the Levine
4 character says I should quit as VP and be
5 a professor again, but my young wife
6 number two and one percent kids need
7 money. So here Dr. Levine is making a
8 joke. It's understood through common
9 knowledge that Dr. Levine had been
10 divorced and married again.

11 Q. When you say Dr. Levine is
12 making a joke, let's be abundantly clear
13 here. It's Dr. Fagal --

14 A. Yes, but in the --

15 Q. -- making a joke about
16 Dr. Levine, correct? Dr. Levine did not
17 make this joke, correct?

18 A. That's correct. The character
19 in the movie representing Dr. Levine is
20 making a joke about his situation. He's
21 got a second family to support and all
22 this turmoil. He could go back to be a
23 professor at a lower pay rate but his wife
24 might not appreciate the lower salary and

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1 posted it?

2 A. No.

3 Q. Ever consider not posting this
4 video after you prepared it and watched
5 it?

6 A. I don't recall. I did listen
7 to Larry Walsh if he offered his opinion.

8 Q. Was he the only person that
9 provided commentary to the effect that you
10 could be terminated if you do this?

11 A. He's the only one I can recall
12 at this moment.

13 Q. Did you show it to your wife
14 before you posted it?

15 A. Yes.

16 Q. Was she in agreement that you
17 should do this?

18 A. She was wondering if I would
19 get in trouble about it and she didn't
20 want all that, and I told her it's
21 something I had to do, and she said fine.

22 Q. When you say you had to do it,
23 no one at Marywood asked you to do this,
24 correct?

55 (Pages 214 to 217)

Page 218

1 A. No.
 2 Q. When you had to do it, it was a
 3 decision that you --
 4 A. My personal decision.
 5 Q. -- personally made --
 6 A. Right.
 7 Q. -- correct?
 8 And when you say your wife
 9 didn't want any trouble, would that imply
 10 a termination of your employment?
 11 A. It could be anything. Just
 12 being called in on the carpet, just the
 13 stress of ongoing back and forth that had
 14 already been going on for months. So...
 15 Q. What is your personal opinion
 16 of Adolf Hitler?
 17 MR. COHEN: Can you repeat
 18 that?
 19 MS. PEET: What is his personal
 20 opinion of Adolf Hitler?
 21 THE WITNESS: A horrible human
 22 being.
 23 BY MS. PEET:
 24 Q. Why is he a horrible human

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1 being in your opinion?
 2 A. He was a ruthless dictator who
 3 did all sorts of bad things.
 4 Q. Such as?
 5 A. Such as Kristallnacht, such as
 6 putting Jews in concentration camps, such
 7 as going after anybody who spoke out
 8 against him, such as mentioned in the
 9 video beheading the white -- what is it,
 10 the white flower protesters, concentration
 11 camps, war crimes.
 12 Q. In your opinion, do you think
 13 someone would be fond of being associated
 14 with Adolf Hitler?
 15 A. Fond, no.
 16 Q. Do you think someone would be
 17 fond or think favorably if they were being
 18 associated with a Nazi?
 19 A. No, but let me -- not all Nazi
 20 behaviors were equivalently bad. So if
 21 somebody said you tore down the posters
 22 like a Nazi would, well, that's a
 23 descriptive term. That's -- if you did
 24 it, you did it. It's a comparison.

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1 Q. Did it ever cross your mind
 2 that you were depicting a member of the
 3 Jewish faith as a Nazi?
 4 MR. COHEN: Can you repeat
 5 that?
 6 BY MS. PEET:
 7 Q. Did it ever cross your mind
 8 that you were depicting a member of the
 9 Jewish faith as a Nazi?
 10 A. Well, it crossed my mind
 11 because I changed the name to Levine and I
 12 wanted to make it clear that Alan Levine
 13 -- I didn't really consider him to be my,
 14 quote/unquote, enemy.
 15 Q. Although you changed the name,
 16 the person that you're depicting is
 17 Dr. Alan Levine, correct?
 18 A. Yes.
 19 Q. Okay.
 20 A. I mean -- yes.
 21 Q. Do you think the videos are
 22 professional?
 23 A. What do you mean by
 24 professional?

Page 221

1 Q. Do you think it was a
 2 professional thing to do as a tenured
 3 professor at Marywood University?
 4 A. Well, as part of my professor's
 5 job is to seek, you know, open expression
 6 and free inquiry, and I was inquiring as
 7 to what had happened. And so I didn't
 8 think it was out of the ordinary for some
 9 college professors to speak up in a case
 10 like this.
 11 Q. Do you think it was
 12 professional?
 13 A. I don't have an opinion really.
 14 Q. Can you understand how some
 15 people would find it to be unprofessional?
 16 A. Again, I'm not sure what you
 17 mean by unprofessional. You say, oh, that
 18 wasn't a polite thing to do. I could
 19 understand why some people wouldn't think
 20 it was polite. Unprofessional, I really
 21 don't have a good answer for that.
 22 Q. What about inappropriate
 23 conduct from a tenured professor?
 24 A. I wouldn't say what I did was

56 (Pages 218 to 221)

Page 222

1 inappropriate given the circumstances.

2 Q. And the circumstances being --
3 you're talking about the posters?

4 A. That's correct.

5 MS. PEET: Why don't you change
6 the video.

7 ---

8 THE VIDEOGRAPHER: We're now
9 off the record. The time is 2:36
10 p.m. This ends disk number two.

11 ---

12 (At this time, a short break
13 was taken.)

14 ---

15 THE VIDEOGRAPHER: We are now
16 on the record. The time is 2:43 p.m.
17 This starts disk number three.

18 ---

19 (At this time, a document was
20 marked for identification as Exhibit
21 Fagal-17.)

22 ---

23 BY MS. PEET:

24 Q. Exhibit-17 seems to be e-mail

Page 224

1 correct?

2 A. Let me see.

3 Q. Down at the bottom.

4 A. Yes. He -- yes. Uh-huh.

5 And, yes, I see that -- I say
6 what is your best time for Republican
7 Conservative Club meeting, so he was -- he
8 would have been a student.

9 Q. Thank you.

10 ---

11 (At this time, a document was
12 marked for identification as Exhibit
13 Fagal-18.)

14 ---

15 BY MS. PEET:

16 Q. Is one of the people that you
17 sent the e-mail to with the videos Kevin
18 Wyllie?

19 A. I presume he's on that e-mail
20 list, yes.

21 Q. Okay.

22 And who is Kevin?

23 A. I don't know for sure, but I
24 looked him up after I got this and he was

Page 223

1 exchange between you and Benjamin
2 Harrington.

3 Do you see that?

4 A. Yes.

5 Q. Was Benjamin Harrington at this
6 time, January of 2012, a student at
7 Marywood?

8 A. I believe he was registered for
9 the spring semester though I don't know
10 that for sure.

11 Q. Well, you sent it to him at his
12 Marywood --

13 A. That's correct.

14 Q. -- .edu e-mail address --

15 A. That's correct.

16 Q. -- is that correct?

17 A. That's correct.

18 Q. So he's not a faculty member,
19 correct?

20 A. No.

21 Q. He was a student, correct?

22 A. Correct.

23 Q. And you were telling him to go
24 to YouTube to look at those videos,

Page 225

1 on the member of the faculty on arc --
2 school of architecture.

3 Q. Kevin wrote to you that he
4 understands your concern, but this type of
5 mass e-mail seems a little inflammatory
6 and unprofessional.

7 Do you see that?

8 A. Yes.

9 Q. Do you disagree with what he
10 wrote?

11 A. I would -- I would agree with
12 the a little inflammatory part and I would
13 disagree with the unprofessional part.

14 Q. Okay.

15 But, nonetheless, it's a
16 colleague of yours at Marywood telling you
17 that he found it to be unprofessional,
18 correct?

19 A. He said it seems
20 unprofessional.

21 Q. Okay.

22 A. Right.

23 Q. And he also said it seems like
24 you're having a tantrum.

57 (Pages 222 to 225)

Page 226

1 A. He said that it seems to be a
2 tantrum.
3 Q. He writes although the freedom
4 to protest is a valuable democratic
5 exercise, it should not become a source of
6 fashionable entertainment.

7 Do you see that?

8 A. I do.

9 Q. Do you disagree with what he
10 wrote?

11 A. Yes.

12 Q. Did you receive this e-mail
13 from Kevin?

14 A. Yes.

15 - - -

16 (At this time, a document was
17 marked for identification as Exhibit
18 Fagal-19.)

19 - - -

20 BY MS. PEET:

21 Q. Did you prepare Exhibit-19?

22 A. Yes.

23 Q. What is it?

24 A. I believe that I prepared this

Page 228

1 if he shared it with counsel?

2 MS. PEET: It would include
3 counsel.

4 MR. COHEN: Okay.

5 MS. PEET: Sure.

6 BY MS. PEET:

7 Q. I'm not -- I didn't ask for
8 what any attorney's views are or what they
9 spoke about, but my question was did you
10 share this document with anyone after you
11 created it?

12 A. I sent it to the -- I believe
13 -- quite sure I recall that I sent it to
14 the -- one of the committees, like the ad
15 hoc committee that was considering my
16 case, the faculty committee, and I sent it
17 to them but I did not distribute this to
18 the faculty or anything like that.

19 Q. Did you share it with anyone
20 else other than the ad hoc committee?

21 A. I might have sent it to Bill
22 Ziegelbauer and a few people but not -- I
23 can't recall right now.

24 Q. Who were the other few people?

Page 227

1 in the -- after January 23rd after I had
2 been suspended and after I had heard the
3 concerns expressed by President Munley and
4 about how terrible the video was, and so I
5 decided I would go through each screen and
6 copy the words exactly -- all the words in
7 the video exactly as they were and I would
8 try to, shall we say, footnote each set of
9 comments that were in the video to explain
10 further where they came from, what the
11 relationship to, say, a history reference
12 was and things like that.

13 Q. Did anyone help you prepare
14 this?

15 A. No.

16 Q. Did you share it with anyone?

17 MR. COHEN: Without disclosing
18 any -- other than --

19 MS. PEET: I didn't ask about
20 communications. I just said did you
21 share it with anyone, and that would
22 include counsel.

23 THE WITNESS: I --

24 MR. COHEN: Wait, you're asking

Page 229

1 A. I might have sent it to my
2 sisters. I can't recall. I don't
3 remember sending it to anybody other than
4 the committee.

5 Q. And was the purpose of creating
6 this to give it to the ad hoc committee?

7 A. I believe the original purpose
8 was for myself. I wanted to, shall we
9 say, convince myself that I wasn't crazy
10 and -- but I really wanted to explain to
11 anybody who wanted to know why this scene,
12 why that, I wanted to be able to have a
13 record -- complete record of what I did,
14 so that's why I created this really for
15 myself.

16 Q. Did you convince yourself that
17 you're not crazy?

18 A. Yes.

19 Q. Do you think other people think
20 you're crazy?

21 A. I don't know.

22 Q. Do you think it would be
23 reasonable for other people to think
24 you're crazy?

58 (Pages 226 to 229)

Page 230

1 A. No.
 2 Q. Have you ever been treated with
 3 a psychiatrist or psychologist or other
 4 mental health provider?
 5 A. No.
 6 Q. Had anyone ever suggested that
 7 you treat with a psychologist,
 8 psychiatrist, or any other type of mental
 9 health provider?
 10 A. No.
 11 Q. Have you ever been diagnosed
 12 with any sort of mental health disease or
 13 illness?
 14 A. No.
 15 Q. Have you ever been diagnosed
 16 with OCD?
 17 A. No.
 18 ---
 19 (At this time, a document was
 20 marked for identification as Exhibit
 21 Fagal-20.)
 22 ---
 23 BY MS. PEET:
 24 Q. You're e-mailing here with a

Page 232

1 this as much as you want and convince
 2 their parents to write. I think you
 3 should take down the second video with
 4 three exclamation marks.
 5 Do you see that?
 6 A. I see that, uh-huh.
 7 Q. Why did you send it to Lindsay?
 8 A. She's a good friend and I
 9 valued her opinion.
 10 Q. Okay.
 11 What did you think when she
 12 sent you her opinion?
 13 A. I understood her point to a
 14 short extent, a small extent. I didn't
 15 think it was really personal. The real
 16 estate portfolio I thought was a joke
 17 about the real estate market, et cetera,
 18 so I disagreed with her opinion.
 19 Q. Okay.
 20 And she's not a Marywood
 21 administration, correct?
 22 A. No.
 23 Q. Did you in fact take down the
 24 second video after she told you to do

Page 231

1 Lindsay, correct?
 2 A. Yes.
 3 Q. Who's Lindsay?
 4 A. Lindsay Groves is a cellist
 5 with the Syracuse Symphony Orchestra. She
 6 lives in Skaneateles, New York.
 7 Q. She's one of the folks that you
 8 sent the e-mail to with the videos,
 9 correct?
 10 A. Yes, I did.
 11 Q. Okay.
 12 And her response to that is on
 13 the bottom of the first page.
 14 Do you see that, January 15,
 15 2012?
 16 A. Yes.
 17 Q. Okay.
 18 And she writes, Fred, the real
 19 estate portfolio slash young wife stuff is
 20 really personal, exclamation mark.
 21 Do you see that?
 22 A. Yes.
 23 Q. Geez, I'm wondering if the
 24 students, who are transients, can get into

Page 233

1 that?
 2 A. No. Again, she did not tell me
 3 to do that.
 4 Q. On the top, you write back to
 5 Lindsay.
 6 Do you see that?
 7 A. Yes.
 8 Q. And in part you write only
 9 those in the know know that Levine, open
 10 parens, written Levine, all capital, as a
 11 joke because as a Jewish guy working for
 12 Hitler, his name cannot be Levine,
 13 exclamation point, closed parens, is on a
 14 second family --
 15 A. Right.
 16 Q. -- period.
 17 A. Uh-huh.
 18 Q. So do you agree that it would
 19 be outlandish for a Jewish person to be
 20 portrayed working for Hitler?
 21 A. I don't know if outlandish is
 22 the word I would use, but I was trying to
 23 make a point about free speech and didn't
 24 want to get anything in there about

59 (Pages 230 to 233)

Page 234

1 raising some subsidiary issue about what
2 religion anybody was in administration, so
3 that's why I changed the name.

4 Q. Were you concerned about
5 offending people?

6 A. I was not willing to offend
7 people just gratuitously. If it had to be
8 done to make a point if they would be
9 offended by the video, unhappy with it,
10 shall we say, then that was part of the
11 price. No one would appreciate being
12 criticized, I don't think, in public.

13 Q. And this was public, correct?

14 MR. COHEN: Excuse me. Say
15 that again.

16 BY MS. PEET:

17 Q. This was public, correct?

18 A. It was available on YouTube, so
19 the public could access it.

20 Q. Do you think this video or the
21 videos do anything to further a supportive
22 or welcoming environment at Marywood
23 University?

24 A. Yes.

Page 236

1 A. She has a private e-mail
2 address, too, but I see the Marywood
3 address there. That's correct.

4 Q. Okay.

5 Does this refresh your memory
6 that you sent it to her as a pre-release
7 at her Marywood e-mail address?

8 A. Let me read. Let's see. Yes.

9 Q. If you look on -- at the time
10 that you were e-mailing with Geri, you did
11 not yet make these videos public, correct?

12 A. That's correct.

13 Q. You write on the first page I
14 do not think -- and "not" being all
15 capitals -- they will try to fire me over,
16 quote, all this, end quote. If by, quote,
17 this, end quote, you mean over what
18 happened so far, then absolutely not,
19 underlined.

20 But, again, at this point you
21 haven't made the videos public?

22 A. That's correct.

23 Q. All right.

24 You then say assuming the

Page 235

1 Q. How is that?

2 A. Because it might tell people,
3 look, if you come to Marywood University,
4 you can speak your mind and have free
5 speech, an open honest debate, and tackle
6 big issues, and this is a university that
7 does that.

8 ---

9 (At this time, a document was
10 marked for identification as Exhibit
11 Fagal-21.)

12 ---

13 BY MS. PEET:

14 Q. These are e-mails between you
15 and Geri Smith, correct?

16 A. Yes.

17 Q. And Geri is the student that
18 you testified about earlier today?

19 A. Yes.

20 Q. And if you can look on the
21 second page, you can see that it's at her
22 Marywood e-mail address.

23 A. I see that.

24 Q. Do you see that?

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1 videos are released, open parens, and at
2 this point I would say they will be with
3 -- I guess 95 percent.

4 Is that what you're trying to
5 say?

6 A. Probability equals point 95,
7 which is 95 percent, yes.

8 Q. Closed parentheses, comma,
9 there will be some very pissed off
10 administrators.

11 Do you see that?

12 A. Yes.

13 Q. Why do you think there were
14 going to be pissed off administrators?

15 A. Because they're being publicly
16 criticized in a satirical funny way that
17 might get a lot of attention.

18 Q. Okay.

19 And who are the administrators
20 that you think would be pissed off?

21 A. Well, the ones mentioned in the
22 video.

23 Q. Who are they?

24 A. As I recall, the names that

60 (Pages 234 to 237)

Page 238

1 were mentioned were Paterson, and Munley,
2 and Garvey, and Heath, and Oliveri, and
3 Levine or Levine, if you will.

4 Q. Okay.

5 You then write in essence I
6 have called President Anne Munley a
7 fascist.

8 See that?

9 A. Yes, uh-huh.

10 Q. You then go on to write tenure
11 is on my side --

12 A. Yes.

13 Q. -- period.

14 A. Uh-huh.

15 Q. To fire me, they would have to
16 go through procedures, comma, set up a
17 committee, comma, have hearings, and then
18 you can continue.

19 You see that?

20 A. Yes, uh-huh.

21 Q. So you gave thought about
22 whether or not they were going to
23 terminate you over this? It crossed your
24 mind?

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1 A. It crossed my mind.

2 Q. And you gave some thought to
3 it?

4 A. Yes, I did.

5 Q. You then wrote they know I
6 would raise a big stink and they would
7 look foolish, game not worth the candle.

8 Are you trying to say that

9 Marywood probably wouldn't terminate you
10 because it's not worth it to them? You're
11 just going to raise a big stink and it's
12 just not worth it?

13 A. As I said, better for them to
14 grimace and wait it out until I retire,
15 and then I give them a suggestion how they
16 could make me retire early with a five day
17 a week crazy teaching schedule.

18 But as I said in the video, the
19 way I was thinking at the time was it's
20 the older professors who have to stand up
21 because the younger professors who don't
22 have tenure are too scared to speak out,
23 and the middle-aged professors who have a
24 family and kids, generally speaking, and

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1 they got their careers and whatnot and
2 they've got -- they're very busy and they
3 don't maybe have time for all the stuff,
4 and I think too many older professors just
5 say well, I'll just not rock the boat and
6 cruise to retirement, and so I felt it was
7 my duty to speak up at some possible cost
8 to myself.

9 Q. Were you calling Marywood's
10 bluff when you posted those videos?

11 A. Bluff?

12 MR. COHEN: Object to the form.

13 BY MS. PEET:

14 Q. You're saying, you know, I
15 don't think they're going to terminate me.
16 I'm going to raise a big stink. They have
17 to go through this whole procedure. They
18 might as well just wait it out until I
19 retire.

20 Were you just kind of pressing
21 their boundaries and see what they were
22 going to do to you, stir the pot a little
23 bit?

24 A. What I was thinking, as I

Page 241

1 recall back then, was that I would have
2 made the video splash. I presume that
3 that would not go on forever but it would
4 make a -- say a two-week or so hot topic
5 on campus and would be, shall we say,
6 embarrassing to the administration to have
7 been found out for what it did, and my
8 hope would be that even if they didn't
9 publically do anything that they would
10 mend their ways and that life would go on.
11 I would continue teaching.

12 If it came to being called in
13 on the carpet and trying to be escalated
14 into firing me for some presumed violation
15 of something, then depending how that was
16 handled publicity-wise one could either,
17 you know, keep it all quite and let the
18 committees do their work or one could --
19 which I did not do, one could go down
20 battling raising a public outcry, Fagat up
21 on charges, blah, blah, blah, blah, blah,
22 you know, students march, if any would,
23 you know, for free speech, you know. It
24 could have been a huge semester-long cause

61 (Pages 238 to 241)

Page 242

1 celebre.

2 Q. So you did them a favor?

3 MR. COHEN: Excuse me.

4 BY MS. PEET:

5 Q. So you did --

6 A. Yes.

7 Q. -- them a favor?

8 A. I did them a favor.

9 Q. Do you think that these videos
10 warranted any type of discipline?

11 A. I would say no.

12 Q. And why do you say that?

13 A. I would say -- I would assume
14 that I would perhaps have been called on
15 the carpet and told something along the
16 lines of, gee, Dr. Fagal, I wish you
17 hadn't gone that far. I wish you had -- I
18 wish we had contacted you earlier. I wish
19 we made a settlement before. I wish --
20 you know, I wish you'd come to see
21 President Munley and make a -- and shown
22 her the videos ahead of time.

23 I mean something like that
24 maybe could have happened, and obviously

Page 244

1 In this Exhibit-21, you mention
2 something about not supporting the
3 mission's core values, and we talked about
4 core values earlier.

5 Do you see that?

6 A. Not yet.

7 Whereabouts?

8 Q. It's in the middle of the page
9 in the paragraph that starts --

10 A. The first page?

11 Q. -- tenure is on my side,
12 correct.

13 A. Yes, yes. I see what you're
14 saying.

15 Q. Okay.

16 To your knowledge, when you
17 were a tenured professor in January of
18 2012, were you expected to uphold
19 Marywood's missions and core values?

20 A. Yes.

21 Q. Did you ever apologize to
22 Sister Munley or Dr. Levine about these
23 videos?

24 A. At the meeting -- Dr. Levine

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1 in that case I would have known that she
2 was very upset about the videos going
3 public but that -- and I would be told,
4 gee, please always come to see me before
5 you do anything major like this and, you
6 know, that would have been not a
7 comfortable conversation but it would have
8 been a conversation and that would have
9 been it.

10 Q. Did you try to show the video
11 to Sister Munley before you posted it
12 publicly?

13 A. No, I did not.

14 Q. Did you try to show the video
15 to Dr. Levine before you posted it
16 publicly?

17 A. No.

18 Q. Why not?

19 A. Because I had already tried so
20 very, very hard to find out what had
21 happened. I had made proposals and I
22 thought that was enough. I had done
23 enough.

24 Q. Okay.

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1 was not at the termination meeting, so I
2 did not see Dr. Levine at all after the
3 videos were posted. I did not make an
4 explicit apology at the January 23rd
5 meeting.

6 Q. Did you ever apologize to
7 Sister Munley about those videos?

8 A. No.

9 Q. Did you ever apologize to
10 Dr. Levine about those videos?

11 A. No.

12 Q. Did you ever apologize to any
13 member of the Marywood administration
14 about those videos?

15 A. No.

16 ---

17 (At this time, a document was
18 marked for identification as Exhibit
19 Fagal-22.)

20 ---

21 BY MS. PEET:

22 Q. What's been marked as Exhibit-2
23 seems to be e-mails between -- 22 --
24 between you and Rod Carveth dated early

62 (Pages 242 to 245)

Page 246

1 January 2012.
 2 Do you see that?
 3 A. Yes.
 4 Q. And I believe you testified
 5 earlier that he was one of the folks that
 6 saw the pre-release of the videos.
 7 A. Yes.
 8 Q. If you look at the bottom of
 9 the first page --
 10 A. Yes.
 11 Q. -- Rod writes to you honestly I
 12 think it is a brilliant satire. If it was
 13 released, however, I think you would catch
 14 an incomparable amount of grief. Anytime
 15 Hitler gets raised, no one pays attention
 16 to the message but the symbolism of Hitler
 17 as a murderer and butcher. I think the
 18 university would try and find some
 19 loophole to undo your tenure and fire you.
 20 It's not what you -- what you are saying
 21 here but how you are saying it that puts
 22 you at risk.
 23 Do you see that?
 24 A. Yes, I do.

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1 Q. Did you understand what Rod was
 2 trying to say to you?
 3 A. Yes, I did.
 4 Q. Okay.
 5 And what was he trying to say
 6 to you?
 7 A. He was trying to say I was
 8 taking a risk by posting those videos.
 9 Q. And you understood that was a
 10 risk?
 11 A. I understood it was a risk.
 12 Q. And then you -- the top of the
 13 page is an e-mail that you wrote back to
 14 Rod, and then you write to him you sound
 15 like my wife.
 16 A. Yes.
 17 Q. Did your wife make similar
 18 comments to you?
 19 A. As I mentioned before, she was
 20 worried that I would upset some people and
 21 get in trouble of some sort.
 22 Q. And perhaps lose your job?
 23 A. Well, losing the job -- just
 24 had been an ongoing brouhaha and that

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1 would, you know, continue in some fashion.
 2 Q. You then wrote and I know the
 3 Hitler link is considered by many to be
 4 out of bounds.
 5 A. Yes.
 6 Q. I would have to face that
 7 possibility.
 8 A. Uh-huh.
 9 Q. I am going to rethink this but
 10 I think I won't change my mind about the
 11 release. I will look over the faculty
 12 manual again, heh.
 13 Do you see that?
 14 A. Yes, uh-huh.
 15 Q. Okay.
 16 So is it fair to say that you
 17 didn't change your mind?
 18 A. That's correct.
 19 Q. Okay.
 20 You then wrote down assuming
 21 the videos are released, if Marywood
 22 considered going after my job, they will
 23 probably realize that I would not -- all
 24 caps -- go quietly. If I were a tenured

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1 42-year-old likely to cause trouble for
 2 another 20 to 25 years, then the game
 3 might be worth their votive candle, but I
 4 will be 66 years old in a month. If --
 5 all caps -- they are rational, they will
 6 think I can't be around that -- bold
 7 italicized -- much longer and they will
 8 take a big publicity hit for trying to get
 9 rid of me.
 10 Do you see that?
 11 A. Yes, I do.
 12 Q. So were you -- did you consider
 13 the fact that because you were 66 years
 14 old and you probably didn't have that much
 15 longer of a tenure at Marywood University
 16 that that weighed in your favor?
 17 A. What do you mean by weighed in
 18 my favor?
 19 Q. That they more likely will not
 20 terminate your tenure than had you been
 21 younger?
 22 A. Yes, because I think that if a
 23 younger person were to do what I did --
 24 big if there because when I said they were

63 (Pages 246 to 249)

Page 250

1 younger, I don't think they would tend to
2 do it because of the trade-offs. Because
3 if the younger person did in fact lose
4 their tenured job, it'd be very difficult
5 for that person to find work. It would
6 cause much family turmoil.

7 But I -- as I just recently
8 explained, if one is older, then I
9 considered it my duty to do what I did
10 given my position and, again, as we just
11 discussed, if Marywood had to make the
12 decision what to do about the videos, if
13 it was a 42-year-old, to be rid of that,
14 quote/unquote, troublemaker, they'd be rid
15 of that troublemaker for at least 25
16 years, and so the game would be worth the
17 candle. For me being older, it might be
18 more -- have been more rational for them
19 to take the -- shall we call it a two-week
20 publicity hit and tolerate me for what
21 would not be another 25 years.

22 Q. How many years at that point?

23 A. I had no particular plans to
24 retire. If I was going to retire that

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1 year, I would have filed earlier for the
2 bonus. I was thinking of going at least
3 to age 70 and maybe longer depending how
4 things went.

5 Q. At that point, have you spoken
6 to anyone about retirement?

7 A. No.

8 Q. Did you meet with a financial
9 advisor?

10 A. No, not about retirement. Now,
11 maybe briefly I might have talked to a
12 TIAA-CREF guy once about investments but
13 nothing retirement per se.

14 Q. Do you agree or disagree with
15 Rod's comment that Hitler is a symbolism
16 of murder and -- of a murderer and a
17 butcher?

18 A. Hitler is often used as a
19 symbol that way, yes, but he's also used
20 in movies like Mel Brooks as a comedy
21 figure.

22 Q. The videos, were they connected
23 to your intro to social sciences course?

24 A. No.

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1 Q. Were they -- what other courses
2 were you teaching that semester?

3 A. In the spring of 2012, I
4 believe I was teaching two sections of
5 economics, a U.S. history class, and I
6 think I had the social science class also.
7 I'm not sure.

8 Q. Was the video connected to any
9 of those courses?

10 A. No.

11 Q. Was it part of some academic
12 research?

13 A. I follow the news on American
14 campuses quite closely in terms of what's
15 going on, in terms of social justice
16 protests, Occupy Wall Street protests,
17 free speech protests, all sorts of Black
18 Lives Matter protests, whatever might be
19 going on on any different campus, or not
20 going on, or not allowed to go on.

21 So I was always -- and plus I
22 always had -- I had that contact with
23 FIRE, so I was aware of what was going on
24 and I was also aware that, you know, part

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1 of what had happened to me was not unique
2 perhaps to Marywood, and so, therefore, if
3 it came out what had happened to me, that
4 might very well get picked up by other,
5 shall we see, researchers or academics,
6 you know, studying, you know, what's going
7 on on campus.

8 Q. Were you a researcher?

9 A. I was not doing official
10 research for journal article about free
11 speech on campus.

12 Q. So this article -- this video
13 -- these videos were not connected to any
14 sort of official research for any journal
15 articles, correct?

16 A. That's correct.

17 Q. Were they -- were these videos
18 part of some scholarly pursuit?

19 A. Well, I was pursuing this in a
20 -- for intellectual free speech purposes
21 if you want to call that a scholarly
22 pursuit. I think I would.

23 Q. Okay.

24 Was it part of the curriculum?

64 (Pages 250 to 253)

Page 254

1 A. Well, when we do introduction
2 to social science, there's usually a
3 student who'd study the Constitution,
4 maybe read a few federalist papers, and
5 there'd be a discussion about how it might
6 relate to current events, and so something
7 like this could be used as an example.

8 Q. Could in the hypothetical
9 sense, correct?

10 A. Yes. I had no specific plans
11 to incorporate it in the course content
12 for that semester.

13 Q. Okay.

14 When you made the videos and
15 then posted those videos on YouTube, you
16 knew why you did it, right?

17 A. Would you repeat the question,
18 please?

19 Q. When you made the videos and
20 then you posted them on YouTube, you know
21 why you did it, right?

22 A. Yes.

23 Q. And as of January 13, 2012,
24 when they were officially posted and you

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1 e-mailed them around, you knew at that
2 time why you had done this, correct?

3 A. Yes.

4 Q. And prior to January 13, 2012,
5 you had already consulted with a lawyer,
6 correct?

7 A. No.

8 Q. I thought you testified earlier
9 that you had consulted with a lawyer
10 perhaps in December of 2011.

11 Is that not true?

12 A. I mentioned to my
13 brother-in-law, who's a lawyer, that, you
14 know, I was involved with a dispute on
15 campus. I had written to FIRE and lawyers
16 at FIRE, but that was about the incident
17 and publicity. It was not a consulting
18 for a lawyer for me, so I did no
19 consulting.

20 Q. In your opinion, can a tenured
21 professor say or do anything they want?

22 A. I don't know.

23 Q. Can a tenured professor use the
24 N word?

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1 A. That's a good question.

2 MR. COHEN: I'm going to
3 object, legal conclusion. You can
4 answer.

5 BY MS. PEET:

6 Q. Is your answer I don't know?

7 A. The answer would be I would
8 hope a professor could use the N word, as
9 you phrase it, in an academic setting, for
10 instance, talking about the use of the
11 word in Huckleberry Finn and what it means
12 and how it was often used as a
13 vituperative term and as an academic
14 discussion.

15 For example, there was a
16 professor, I believe, at the University of
17 Oklahoma who just basically got driven out
18 of class because she was trying to use it
19 in that type of context. So in that
20 sense, I think it should be allowed to be
21 used.

22 Q. What about in a satirical
23 video?

24 MR. COHEN: Objection, legal

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1 conclusion and to form.

2 THE WITNESS: I'm sorry.

3 MR. COHEN: You can answer.

4 THE WITNESS: I can answer.

5 I've never used the word in
6 class. I would -- I have not
7 contemplated using the word. I would
8 imagine somebody could make some sort
9 of -- there are rap videos that use
10 the word all the time that are out
11 there from what I understand.

12 BY MS. PEET:

13 Q. Are you aware of any rap video
14 artist that's a tenured professor at a
15 university?

16 A. I couldn't name one.

17 Q. Okay.

18 So my question to you is do you
19 feel if it's appropriate for a tenured
20 professor to use the N word in a satirical
21 video?

22 A. I would have to see the
23 satirical video. I don't know.

24 Q. When was the first time you

65 (Pages 254 to 257)

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1 heard from anyone in Marywood
2 administration after you posted these
3 videos?

4 A. I believe it would have been
5 Mike Foley Monday morning, January 23rd.

6 Q. Okay.
7 And how did Michael Foley get
8 in contact with you?

9 A. He came to my office at 8:45
10 a.m.

11 Q. And what did he tell you he was
12 -- did he talk to you then? What
13 happened?

14 A. He came to me and he said that
15 Sister Anne Munley or President Munley,
16 however he used the term, wanted to see me
17 at 9 o'clock.

18 Q. Did he tell you why?

19 A. I asked him -- I asked him. I
20 said well, why, and he said well, we can
21 -- you can probably figure it out.

22 Q. And did you figure it out?

23 A. I assumed it had something to
24 do with the videos.

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1 and I e-mailed to the faculty on January
2 13th.

3 Q. Were you surprised that
4 President Munley wanted to speak with you?

5 A. No. A little surprised but not
6 -- not totally.

7 Q. Why weren't you totally
8 surprised?

9 A. Only because I knew that she
10 would be unhappy with the videos.

11 Q. Because you depict her as
12 Hitler?

13 A. I wasn't thinking so much about
14 that really as -- in fact, I wasn't
15 thinking about that at all.

16 Q. What were you thinking about?

17 A. I was thinking about the -- the
18 fact that the Hitler -- the parody videos
19 might be seen as funny and, therefore, get
20 a lot of views and raise the issue that I
21 was concerned about raising about what
22 happened to the posters.

23 Q. You were present at Sister
24 Munley's deposition last week, correct?

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1 Q. Do you think she was going to
2 be happy with you?

3 A. No.

4 Q. Were you surprised that up
5 until January 23rd you didn't hear from
6 anyone at Marywood about the videos?

7 A. I was a little surprised but I
8 thought maybe they were thinking it was
9 better to let them, as I discussed before,
10 lie low, take -- take the publicity hit.

11 Q. Okay.

12 Did you in fact go to that 9
13 o'clock meeting?

14 A. Yes, I did.

15 Q. And where did that meeting take
16 place?

17 A. It was in President Munley's
18 office complex in a room with a conference
19 table.

20 Q. And this meeting was exactly
21 ten days after you posted the videos,
22 correct, or at least e-mailed it to
23 Marywood that you posted it?

24 A. Yes. The meeting was the 23rd

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1 A. Yes.

2 Q. And you heard Sister Munley
3 discuss at length what her background and
4 experiences are and have been, correct?

5 A. Yes.

6 Q. After hearing that, do you have
7 a different opinion on what you did and
8 perhaps have a little bit of remorse that
9 you depicted her as Adolf Hitler?

10 A. Again, I wouldn't say that I
11 depicted her as Adolf Hitler. I would say
12 it was -- somebody in a Hitler costume was
13 playing Anne Munley's role. Anne Munley
14 was not playing a Hitler role. So she was
15 dressed, if you will, in a Hitler costume
16 to make the point that there was what I
17 would consider bad behavior tearing down
18 the posters as the fascists would do. I
19 point out in the video I never use the
20 word Nazi, not once.

21 Q. There are swastikas on those
22 people's arms, correct?

23 A. Yes.

24 Q. There's no -- there can be no

66 (Pages 258 to 261)

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1 debate or room for a question whether or
2 not those people depicted Nazi member --
3 Nazi members, correct?

4 A. The people in the Downfall
5 video were depicting Nazis.

6 Q. Okay.
7 Who was present at this
8 meeting?

9 A. Mike Foley was present and
10 Patricia Dunleavy was present.

11 Q. Back to my question.
12 After hearing Sister Munley's
13 testimony about her experience, and her
14 background --

15 A. Yes.

16 Q. -- and her beliefs, has your
17 views on the videos changed?

18 A. My views on the video haven't
19 changed. I certainly am sorry if
20 President Munley took them what I would
21 consider the wrong way as being accused of
22 being like Adolf Hitler's worst traits as
23 if I was calling her a murderer of Jews.
24 That was absolutely no intent and I don't

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1 Munley wasn't sincere about what she was
2 saying, that she was making it up, or did
3 you feel that she really felt that way
4 when she was describing it during her
5 deposition?

6 A. I don't know. Sometimes people
7 will play the victim card, so I don't
8 know.

9 Q. Tell us everything that
10 happened during that meeting.

11 A. Well, I was called in and, as I
12 recall, Sister Anne Munley was at the head
13 of the table about where the videographer
14 is and Mike Foley was approximately where
15 that empty chair is, the first empty
16 chair. I believe Patricia Dunleavy was
17 not at the table but sitting in a chair
18 just to the back maybe with a little
19 notebook in her lap of some sort, and I
20 was sitting approximately where you are
21 sitting.

22 And the discussion -- I was
23 asked if I posted the videos and I really
24 post -- I posted them to YouTube -- if I

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1 think anybody seeing the video -- I won't
2 say anybody. I don't think most people
3 seeing the video would take it in that
4 sense.

5 Q. Do you have any remorse after
6 hearing Sister Munley's deposition about
7 those videos?

8 A. I feel sad that she feels that
9 way.

10 Q. Do you wish you didn't do it?

11 A. No.

12 Q. Knowing how she felt, you would
13 still do it again?

14 A. Knowing how she felt, I might
15 have gone in and showed her the video
16 ahead of time.

17 Q. So you may have changed
18 strategy a little bit?

19 A. That's correct. But at the
20 time, if I was put back in a time machine
21 given the same circumstances, given who I
22 was at the time, I presume I would have
23 made the same decision.

24 Q. Do you believe that Sister

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1 sent the e-mail and posted the videos and
2 I agreed to that, and then I was asked, I
3 believe, to explain the videos in terms of
4 how they fit into the core values or
5 something, and so I started to explain --
6 remember, the videos are all about the
7 poster tear downs. So I wanted to go back
8 and explain the poster tear downs and how
9 those led to the video and all the things
10 I had done and to, you know, set the
11 stage, and when I began to explain about
12 the posters, again, leading up to the
13 videos, I was cut off and told no, I could
14 not discuss that. And then I believe I
15 said well, I would like to answer in
16 writing; no, you can't do that, and Sister
17 Anne Munley wanted to hear about the
18 videos.

19 And so I couldn't explain -- as
20 I saw it, I couldn't explain the videos
21 without the context of the whole posters
22 history, and so it was a 15-minute
23 meeting. It ended at 9:15 and I was
24 probably suspended I'll say six -- maybe

67 (Pages 262 to 265)

Page 266

1 six or seven minutes into the meeting.
 2 And after that, as far as I was concerned,
 3 well, the hammer has dropped and it was a
 4 simple question of, okay, what's next, and
 5 then Sister Anne Munley was saying she
 6 wanted an explanation about the videos.

7 So I was explaining -- I tried
 8 to explain how I had tried to cooperate
 9 and seek some sort of agreement through
 10 Alan Levine and whatnot, and so I got, you
 11 know, that off my chest. So I explained
 12 some of the videos even though I hadn't
 13 been allowed to before I got suspended,
 14 and Sister Anne wanted me to justify --
 15 explain the videos, and I really -- at
 16 that point the game was over and the
 17 questions were vague, and I said -- I was
 18 talking about justice. The videos -- I
 19 tried to, you know, get justice for the
 20 free speech cause basically, and so
 21 there's some, should I say, dumping out by
 22 me of some of those concerns I had but I
 23 -- philosophically, you know, explaining
 24 the videos. I'd been suspended already

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1 and at that point it was what's your
 2 e-mail address and turn in the keys to Pat
 3 Dunleavy.

4 ---

5 (At this time, a document was
 6 marked for identification as Exhibit
 7 Fagal-23.)

8 ---

9 BY MS. PEET:

10 Q. Mr. Fagal, have you ever seen
 11 this document before? It's a two-page
 12 document.

13 A. Yes.

14 Q. And it appears to be notes from
 15 the meeting that you just described that
 16 took place on January 23, 2012.

17 Is this a fairly accurate
 18 description of the -- a summary of what
 19 took place at the meeting?

20 A. Well, I remember reading this
 21 and I had some problems with some of these
 22 notes because these were written up after
 23 the raw notes. I'd have to go over this
 24 in some detail here, review it.

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1 MR. COHEN: Can you give him
 2 some time to read it?

3 MS. PEET: Sure.

4 ---

5 (At this time, the witness
 6 complies with request.)

7 ---

8 THE WITNESS: Okay.

9 So in the third paragraph

10 here --

11 BY MS. PEET:

12 Q. The one that starts Sister Anne
 13 asked Dr. Fagal?

14 A. Yes.

15 If we went down to where it
 16 says Sister Anne asked Dr. Fagal how the
 17 videos upheld those values, and then your
 18 next sentence says Dr. Fagal says he
 19 wouldn't answer any more questions.
 20 Well...

21 Q. Do you dispute that?

22 A. If we go down -- yes. Just
 23 jump down a minute. Next to last
 24 paragraph, Sister Anne -- okay. The

Page 269

1 middle there, Sister Anne told Dr. Fagal
 2 that she was suspending him with pay.

3 There's nothing here after it
 4 says Sister Anne asked Dr. Fagal how the
 5 videos upheld those values, that is when I
 6 started to explain the videos controversy
 7 leading up -- pardon me -- the posters
 8 controversy leading up to the videos, and
 9 as soon as I started to do that to set the
 10 context for the videos, I was summarily
 11 cut off and told that I could not do that.

12 I could not discuss the
 13 posters, that she wanted to know about the
 14 videos, and basically I was -- I can't --
 15 like Hamlet without the prince of Denmark
 16 or whatever it is. I needed to explain
 17 the videos in terms of the posters and I
 18 was not allowed to do that.

19 Q. Okay.

20 A. And so when I stopped talking
 21 and was told to discuss the videos and I
 22 said the word "justice", and then that was
 23 it. I mean I couldn't -- I was not
 24 allowed to explain, and at that point I

68 (Pages 266 to 269)

Page 270

1 was suspended.
 2 Q. Okay.
 3 Were you surprised you were
 4 suspended?
 5 A. I was a little bit surprised,
 6 yes.
 7 Q. Why?
 8 A. Because I thought there might
 9 be a different conversation. I mean there
 10 wasn't...
 11 Q. Were you -- to your knowledge,
 12 were you suspended over those videos?
 13 A. I presume that's what it was
 14 for, yes.
 15 Q. You were suspended with pay,
 16 correct?
 17 A. Correct.
 18 Q. So the meeting happened on a
 19 Monday.
 20 Did you call Alan Levine at his
 21 home that prior Saturday?
 22 A. Yes.
 23 Q. Did you speak with Alan?
 24 A. No.

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1 Q. Did you leave him a voice mail?
 2 A. Yes.
 3 Q. Did you tell him you wanted to
 4 have a conversation off the record?
 5 A. Yes.
 6 Q. Why?
 7 A. Because I was wondering. As
 8 you said, a week had gone by and I hadn't
 9 heard anything. So I was just wondering
 10 what -- what had happened and if there was
 11 any -- I wouldn't say anything I could do
 12 but anything to -- I assumed something
 13 might be happening but I didn't know. I
 14 just wanted to touch base and see what was
 15 going on.
 16 Q. Do you know what Dr. Levine's
 17 reaction was to the videos?
 18 A. Not at the time I did not. I
 19 did not know.
 20 Q. As we sit here today, do you
 21 know what Dr. Levine's reaction was?
 22 A. In some e-mail discovery, I
 23 learned that he said he was upset.
 24 Q. Do you know whether or not he

Page 272

1 agreed with the decision to suspend your
 2 employment?
 3 A. At the time, I didn't know. I
 4 thought maybe he didn't support it because
 5 he was not the one who suspended me.
 6 Q. Okay.
 7 As we sit here today, do you
 8 have any reason to believe that Dr. Levine
 9 supported the decision to suspend your
 10 employment?
 11 A. I can't remember the exact --
 12 when I was looking at some of the
 13 discovery e-mails, I believe -- I know
 14 there was administration meetings about
 15 having the meeting with me on the 23rd
 16 and, as I recall, he seemed to be all in
 17 favor of that.
 18 Q. Of that being suspension?
 19 A. I recall that -- I believe
 20 suspension was on the table in one of
 21 those agendas that I read.
 22 Q. And when you say you learned
 23 Dr. Levine was in favor of that, of that,
 24 did you mean suspension?

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1 A. I know he was in favor of the
 2 meeting. I don't know exactly what
 3 punishment, shall we say, he was in favor
 4 of.
 5 Q. Okay.
 6 You were ultimately terminated,
 7 correct?
 8 A. Correct.
 9 Q. And is it your understanding
 10 you were terminated based on those videos
 11 you created?
 12 A. Yes, that's the -- that's the
 13 basic charge.
 14 Q. Both suspension and termination
 15 are forms of discipline, correct?
 16 A. Well, yes. Suspension I would
 17 call discipline and termination would be
 18 execution.
 19 Q. So would you agree that
 20 suspension is a lesser form of discipline
 21 than termination?
 22 A. Yes.
 23 ---
 24 (At this time, a document was

69 (Pages 270 to 273)

Page 274

1 marked for identification as Exhibit
 2 Fagal-24.)
 3 ---
 4 BY MS. PEET:
 5 Q. Do you know who Frances Ferrese
 6 -- and I apologize if I'm mispronouncing
 7 that -- is?
 8 A. Yes, I do know Fran Ferrese.
 9 Q. And was she the administrative
 10 assistant to President Munley?
 11 A. That sounds like a good title
 12 these days. Executive secretary to the
 13 president it says here.
 14 Q. Okay.
 15 And you received this e-mail
 16 from her on January 24, 2012; is that
 17 correct?
 18 A. Yes.
 19 Q. And it included various
 20 attachments, correct?
 21 A. Do I remember?
 22 Q. Just for --
 23 A. Okay. Yeah.
 24 Q. -- for the last two policies,

Page 275

1 249 through 257, I will tell you were not
 2 provided with the letter. The rest were,
 3 and those would be the progressive
 4 discipline policy and the faculty
 5 grievances and appeals policy, but the
 6 other letter -- the other policies you
 7 were provided with.
 8 A. Okay. So...
 9 Q. Is this how you learned that
 10 Sister Munley was recommending your
 11 termination of employment?
 12 A. Yes.
 13 Q. And it was -- these were the
 14 issues that you were discussing the
 15 previous day in the meeting with President
 16 Munley, correct?
 17 A. Which issues? On the letter on
 18 page --
 19 Q. Yeah, what's contained in the
 20 letter.
 21 A. Do you mean where it says as
 22 you know, our values include? Does
 23 that --
 24 Q. Yes.

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1 A. Okay.
 2 Q. This was the same idea that was
 3 discussed with you the day before,
 4 correct, in the meeting?
 5 A. Let me read here. I see what
 6 she wrote.
 7 And what's the question?
 8 Q. The issue that's being
 9 addressed in this letter, namely how she
 10 viewed your behavior, that was discussed
 11 the day before with you in the meeting,
 12 correct? This is not the first time
 13 you're hearing that Sister Munley --
 14 A. Yes. I can't recall all the
 15 terms such as sexually explicit. I don't
 16 recall all those terms being used. I knew
 17 there was unhappiness with the --
 18 Q. Okay.
 19 A. -- videos but not all those
 20 terms.
 21 Q. What did you do when you
 22 received this letter?
 23 A. Right around this time, if not
 24 the day, I would have called -- I believe

Page 277

1 I called FIRE. I might have been in
 2 contact with them the day before thinking
 3 perhaps I needed -- I should have a
 4 lawyer.
 5 And so your question was what
 6 did I do that day?
 7 Q. When you received this letter.
 8 A. Yes. So I believe I called
 9 FIRE. That would have been my first call.
 10 Q. Okay.
 11 And is that when they gave you
 12 Jonathan Cohen as a referral?
 13 A. Yes.
 14 Q. Did you do anything else after
 15 you received this letter?
 16 A. I can't recall. I told my
 17 wife.
 18 Q. What did your wife say?
 19 A. I can't remember exactly what
 20 she said but she didn't cry or throw
 21 dishes or anything.
 22 Q. Were there some expletives?
 23 A. No, no.
 24 Q. Was she happy? Was she

70 (Pages 274 to 277)

Page 278

1 pleased?

2 A. I would say she was not pleased
3 but she understood.

4 Q. Okay.

5 If you look at DEF187, which
6 was the last page of the actual packet
7 that was sent to you.

8 A. 187, okay.

9 Q. Do you see it has a release of
10 personal information document and then a
11 place for you to sign and date?

12 A. Yes.

13 Q. Do you remember receiving this?

14 A. Yes.

15 Q. Did you check one of the boxes,
16 sign, date it, and return it by
17 February 3, 2012?

18 A. No.

19 Q. Why not?

20 MR. COHEN: Without disclosing
21 attorney-client communications.

22 THE WITNESS: Without
23 disclosing attorney-client --

24 MR. COHEN: Yes.

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1 policy?

2 A. Would you repeat the question?

3 Q. Prior to January of 2012, have
4 you seen --

5 A. You said 2005. Okay. I'm
6 sorry.

7 Q. Oh, my apologies.

8 A. Okay. So --

9 Q. It's been a long day.

10 A. -- just repeat it one more
11 time.

12 Q. Sure, of course.

13 Prior to January of 2012, had
14 you ever seen this tenure policy?

15 A. I had seen it. I don't know if
16 I read every single word of it because it
17 does change over the years.

18 Q. But the policy was made
19 available to you nonetheless?

20 A. Yes.

21 Q. Okay.

22 If you go to the next policy,
23 which is the civil rights policy, 175
24 through 176.

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1 THE WITNESS: I'm not sure what
2 would -- it was suggested that I not.

3 BY MS. PEET:

4 Q. Let's look at DEF169 and it
5 goes through 174. It's the tenure policy.

6 A. Okay.

7 Q. Did you understand that tenured
8 professors, nonetheless, still have to
9 abide by the tenure policy?

10 MR. COHEN: Objection, legal
11 conclusion. You can answer.

12 THE WITNESS: If you have
13 obligations, you should comply with
14 those as you understand them. There
15 might be disagreements as to
16 interpreting a policy.

17 BY MS. PEET:

18 Q. Okay.

19 Did you understand, as of
20 January of 2012, that this tenure policy
21 applied to you?

22 A. Yes.

23 Q. And prior to January of 2005,
24 have you seen this policy, the tenure

Page 281

1 A. Okay.

2 Q. Did you understand in January
3 of 2012 that this policy applied to you?

4 MR. COHEN: Objection, legal
5 conclusion. You can answer.

6 THE WITNESS: Okay.

7 I knew if policies were -- you
8 know, as part of the official
9 Marywood policies that I would be
10 subject to the policies.

11 BY MS. PEET:

12 Q. Did you have -- did you
13 understand in January of 2012 that you had
14 to comply with various Marywood policies
15 including the civil rights policy?

16 MR. COHEN: Objection, legal
17 conclusion.

18 THE WITNESS: Well, I
19 understood I had to follow -- follow
20 the law in terms of -- you know.

21 BY MS. PEET:

22 Q. Okay.

23 My question is not about the
24 law. My question is about Marywood's

71 (Pages 278 to 281)

Page 282

1 civil rights policy.

2 A. Yeah, civil rights policy. I
3 would assume I'd have to follow it, yes.

4 Q. Okay.

5 So you agree it applied to you?

6 MR. COHEN: Same objection.

7 THE WITNESS: Yeah.

8 MS. PEET: Okay.

9 THE WITNESS: Yes.

10 BY MS. PEET:

11 Q. Do you agree that it --
12 Marywood did not condone and will not
13 tolerate discrimination, harassment, or
14 assault by any member of the Marywood
15 community, and then it lists different
16 protective statuses?

17 MR. COHEN: Objection, legal
18 conclusion.

19 MS. PEET: It's not a legal
20 conclusion. I'm reading what the
21 policy says.

22 THE WITNESS: Yes. Okay.

23 BY MS. PEET:

24 Q. Do you see how someone could

Page 284

1 policy did not apply to you?

2 A. No.

3 Q. And in fact you knew about this
4 policy because you reference this policy
5 in your January 13, 2012, e-mail, correct?

6 A. I can't recall specifically
7 referencing it. I'd have to look at it.

8 Q. Okay. We can do that. It is
9 Exhibit-15, and if you look at DEF1445.

10 A. I do remember referring to that
11 Marywood could monitor one's e-mail. I do
12 remember that discussion.

13 Q. Do you remember referring to,
14 in words or substance, a -- that Marywood
15 had a computer policy and beware --

16 A. Yes.

17 Q. -- is the words you used?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. Do you feel that with the
22 videos, you were respecting the civil
23 rights of others?

24 MR. COHEN: Can you repeat

Page 283

1 have found the video to be discriminatory
2 or harassing?

3 A. I can understand how some
4 people would be offended by it. Whether
5 that would be defined as harassing
6 somebody or discriminating against
7 somebody, in my case I would say no.

8 Q. Okay.

9 Do you understand how one could
10 have found the policies to be an abuse of
11 academic freedom?

12 A. No, I don't understand.

13 Q. Do you understand how people
14 that watch the videos could have saw them
15 to be -- or you to have exhibited
16 professional incompetence?

17 A. No, I don't.

18 Q. If you turn to the next policy,
19 177 through 180, it's Marywood's
20 conditions of computer use policy.

21 Do you see that?

22 A. Yes.

23 Q. Did you have any reason to
24 believe in January of 2012 that this

Page 285

1 that?

2 BY MS. PEET:

3 Q. Do you feel that with those
4 videos, you were respecting the civil
5 rights of others to an open and hospitable
6 environment?

7 A. So are we referring to a
8 specific phrase here? Where is this?

9 Q. It comes from the second page,
10 number eleven, but I'm asking you if do
11 you believe that those videos respected
12 the civil rights of others to an open and
13 hospitable environment?

14 A. Yes.

15 Q. Okay.

16 Turn to the next policy, 181
17 through 182, the academic freedom policy.
18 Do you believe that your videos
19 were in furtherance of academic freedom?

20 A. Yes.

21 Q. And how's that?

22 A. Trying to open up discussion,
23 and the videos themselves criticized the
24 forces that would reduce discussion and

72 (Pages 282 to 285)

Page 286

1 free speech.

2 Q. Okay.

3 The policy talks about teachers
4 being entitled to freedom in the
5 classroom.

6 Were the videos shown in the
7 classroom?

8 A. No, they were not.

9 Q. And the videos had nothing to
10 do with the classroom, correct?

11 A. I might have shown them in the
12 class later that semester if we got --
13 when we got to the Constitution and free
14 speech. I might have chosen to say, hey,
15 here's something that happened on campus
16 last semester and I might have talked
17 about first amendment briefly, talked
18 about first amendment issues in public
19 universities versus private, et cetera,
20 and that would have been -- videos don't
21 take long. So I did not have -- plan -- I
22 did not plan to show them but I might
23 have.

24 Q. Okay.

Page 288

1 A. Yes.

2 Q. Do you have any reason to
3 dispute that in January of 2012 this
4 policy applied to you?

5 MR. COHEN: Objection, legal
6 conclusion. Go ahead.

7 THE WITNESS: No.

8 BY MS. PEET:

9 Q. Okay.

10 Do you believe that with your
11 videos you were exercising critical
12 self-discipline and judgment?

13 A. I thought about what I did. It
14 was a tough choice.

15 Q. What was your choice?

16 A. The choice was to -- since I
17 was warned by Rod Carveth and Lindsay, and
18 I think they were the ones who explicitly
19 raised the issue that some people have
20 what I might call a knee jerk reaction to
21 a Hitler reference, that there was a risk
22 I was running by doing that. So I had to
23 think about whether I would do it that way
24 or not and I chose to do it.

Page 287

1 MR. COHEN: Do you mind if I
2 take a five-minute break?

3 MS. PEET: Sure.

4 ---

5 THE VIDEOGRAPHER: We're now
6 off the record. The time is 3:57
7 p.m.

8 ---

9 (At this time, a short break
10 was taken.)

11 ---

12 THE VIDEOGRAPHER: We are back
13 on the record. The time is 4:05 p.m.

14 ---

15 BY MS. PEET:

16 Q. Just another reminder that
17 you're still under oath and your testimony
18 needs to be truthful, accurate, and
19 complete.

20 Do you understand?

21 A. I do understand.

22 Q. 183 to 184 is the Marywood's
23 policy on professional ethics.
24 Do you see that?

Page 289

1 Q. Okay.

2 Do you believe that those
3 videos -- strike that.

4 Do you believe that with those
5 videos you were exercising critical
6 self-discipline and judgment?

7 A. Yes.

8 Q. Okay.

9 Do you believe that with those
10 videos you showed due respect for the
11 opinions of others?

12 A. Yes.

13 Q. Okay.

14 The next 185 through 186 is
15 Marywood's mission and core values.

16 We discussed this earlier
17 today, correct?

18 A. Yes.

19 Q. And you have seen this before,
20 right, Marywood's mission statement and
21 core values?

22 A. Yes.

23 Q. And was it -- I believe you
24 already testified that you understood as a

73 (Pages 286 to 289)

Page 290

1 tenured professor at Marywood you were
2 committed to abiding by Marywood's mission
3 and core values, correct?

4 MR. COHEN: Objection, legal
5 conclusion.

6 THE WITNESS: Yes.

7 BY MS. PEET:

8 Q. Okay.

9 The first core value is
10 Catholic identity.

11 Do you see that?

12 A. Yes.

13 Q. Do you feel that those videos
14 upheld Marywood's Catholic identity?

15 A. I would say the one sentence
16 there is vague to the extent that my
17 videos tried to promote intellectual
18 discourse and criticize what Marywood did
19 to not encourage intellectual values that
20 that would be part of -- that that could
21 be seen as part of the Catholic identity,
22 and I do realize that other people would
23 say no.

24 Q. Okay.

Page 292

1 Q. And do you see how other folks
2 might have watched the video and have
3 believed that the videos did not uphold
4 Marywood's core value of empowerment?

5 A. Well, let me just read the one
6 sentence. Empowerment says education to
7 enable access and to empower the
8 underserved to take a full role in the
9 life of the broader society. I would say
10 that the videos -- by criticizing what
11 Marywood did with respect to the posters,
12 they were encouraging empowerment on the
13 part of students to be exposed to, in this
14 case, the speaker.

15 Q. Okay.

16 My question to you is do you
17 see how folks that have watched those
18 videos may have concluded that they did
19 not uphold Marywood's commitment to
20 empowerment?

21 A. No.

22 Q. Do you believe that your videos
23 upheld Marywood's commitment to service?

24 A. Let me read the sentence.

Page 291

1 Do you believe that your videos
2 upheld Marywood's respect for each person
3 core value?

4 A. Again, respect is a vague term.
5 I can respect -- people have rights, and
6 as a human being they have certain rights.
7 On the other hand, that doesn't mean
8 there's a right not to be criticized, and
9 if one is criticized, one might be
10 offended that they're criticized. That I
11 would say comes with the territory of
12 being a human being.

13 Q. Okay.

14 Do you believe that with those
15 videos you were upholding Marywood's core
16 value of respect for each person?

17 A. Yes.

18 Q. Okay.

19 Do you believe that with your
20 videos you were upholding Marywood's core
21 value of empowerment?

22 A. Yes. Certainly I was the one
23 trying to empower people to be exposed to
24 ideas.

Page 293

1 Well, rooted in the deep belief that
2 learning and scholarship serve the global
3 community is the belief in the value of
4 the diverse types of work that support
5 that service, and the preparation of
6 students for leadership by participation
7 in that service.

8 One way people got exposed to
9 ideas these days is through YouTube videos
10 and sometimes you can use comedy and
11 satire to make a point, and so you can
12 show the unempowered how they can be
13 powerful by making a video with cheap
14 software. So I would say yes.

15 Q. Depicting their boss as a
16 fascist Adolf Hitler?

17 A. I wouldn't say as a fascist
18 Adolf Hitler but I would say as -- there
19 is some behavior that -- such as the
20 tearing down of posters that was
21 paralleled by behavior of the fascist.

22 Q. Do you remember sending an
23 e-mail in which you said essentially you
24 are depicting Sister Munley as a fascist?

74 (Pages 290 to 293)

Page 294

1 A. She -- I can't remember the
2 exact phrase, but I think we just saw that
3 I did use that term. I would note that I
4 did not use the term "Nazi".

5 Q. Okay.

6 Do you believe that with your
7 videos you were upholding Marywood's core
8 value of commitment to excellence?

9 A. Well, the videos certainly did
10 get a lot of views and certainly some
11 people did think they were excellent.
12 That's a matter of opinion as to whether
13 they were excellent or not.

14 Q. I'll ask the question again.

15 Do you believe that the videos
16 uphold Marywood's core value of commitment
17 to excellence?

18 A. Yes.

19 Q. Okay.

20 You said that the videos got a
21 number of views.

22 How many views did it get?

23 A. I believe the first video got
24 somewhere near 2,000 views, and perhaps

Page 296

1 me --

2 Q. Okay.

3 A. -- saying they had seen the
4 videos.

5 Q. What kind of comments did they
6 make?

7 A. Supportive.

8 Q. How did they do that, by
9 e-mail?

10 A. Was it the videos? Let's see.
11 Let me think. I can't remember whether it
12 was the videos now that I think about it
13 or whether it was the reaction to the
14 lawsuit. That might have been -- I might
15 be wrong on the videos.

16 Q. Did you send an e-mail out to
17 folks that you filed a lawsuit against
18 Marywood?

19 A. No. I told some friends of
20 mine that I had but I did not send out any
21 blast e-mail to anybody.

22 Q. Again, I will tell you that the
23 next policy, 249 through 251, was not
24 provided.

Page 295

1 100 of them or 50 of them were by me just
2 checking to see how many views there were.
3 The second video probably got about half
4 that.

5 Q. Did you hear from folks outside
6 the Marywood community, other than we've
7 talked about today, people that you don't
8 know that viewed the videos that reached
9 out to you?

10 A. Let me think.

11 Would you repeat the question,
12 please?

13 Q. Sure.

14 Did you ever hear from anyone
15 that's not affiliated with Marywood that
16 saw the videos that reached out to you,
17 other than what we have already discussed
18 today, to give you their opinion about the
19 videos?

20 A. I believe some ex-Marywood
21 students, through the Marywood grapevine,
22 learned about the videos and saw them and
23 made a comment, and I don't recall anybody
24 without a Marywood connection contacting

Page 297

1 MS. PEET: Actually, can we
2 change this and make -- off the
3 record.

4 ---

5 (At this time, a discussion was
6 held off the record.)

7 ---

8 (At this time, a document was
9 marked for identification as Exhibit
10 Fagal-25.)

11 ---

12 BY MS. PEET:

13 Q. What has been placed before you
14 is Marywood's progressive discipline
15 policy.

16 Do you see that?

17 A. Yes.

18 Q. Have you seen this before?

19 A. Yes.

20 Q. Is it your contention that
21 Marywood violated this policy?

22 A. Yes.

23 Q. Why is that?

24 A. Because the procedures weren't

75 (Pages 294 to 297)

Page 298

1 followed as outlined in the policy.

2 Q. Okay.

3 What procedures weren't
4 followed?

5 A. Well, it says Marywood
6 University endorses a progressive
7 discipline policy designed to promote
8 resolution in a fair and orderly manner
9 because the university regards
10 disciplinary action is corrective and not
11 punitive, and then it talks about
12 procedures and how they commence, and meet
13 with administrator, suspension. The
14 faculty member may be suspended by the
15 vice president for academic affairs.
16 Suspension is justified if immediate harm
17 to the faculty member or others is
18 threatened by the person's continuance.

19 So there are various procedures
20 that I don't think were followed. No
21 remedial -- let's see. Where's the phrase
22 here? My suspension wasn't reviewed by a
23 committee. As I recall, we -- various
24 issues that we raised pertaining to this

Page 300

1 declarative sentence.

2 Q. Have we exhausted all the
3 reasons why you believe the progressive
4 discipline policy has been violated?

5 A. No, because my memory is not
6 perfect.

7 Q. Okay.

8 What are the other reasons?

9 A. I would have to review the
10 Complaint to refresh my memory.

11 Q. Okay.

12 So anything that's included in
13 the Complaint would you like to
14 incorporate here today for the reasons why
15 you believe the progressive discipline
16 policy was violated?

17 A. I believe the Complaint would
18 cover these issues.

19 Q. And by Complaint, just so we're
20 on the same page, we're referring to the
21 Amended Complaint, correct?

22 A. That's correct.

23 Q. Would your position at all
24 change if Dr. Levine was the one that

Page 299

1 set of policies.

2 Q. Okay.

3 The vice president for academic
4 affairs, that would have been Alan Levine,
5 correct?

6 A. Yes.

7 Q. Do you know to whom he
8 reported?

9 A. I presume President Munley.

10 Q. Okay.

11 Does it say that the faculty
12 member can only be suspended by the vice
13 president of academic affairs?

14 A. No.

15 Q. Okay.

16 Does it say suspension is only
17 justified if immediate harm to the faculty
18 member or others is threatened by the
19 person's continuance in the faculty
20 position?

21 A. The word "only" does not appear
22 there.

23 Q. Okay.

24 A. Though it looks like a

Page 301

1 advised you of your suspension versus
2 Sister Munley?

3 A. I believe that that would have
4 been, shall we say, in Marywood's favor if
5 he had been the one who had done it.

6 Q. Okay.

7 How would that have impacted
8 you? When I mean that, who advised you of
9 your suspension.

10 A. Well, if Dr. Levine had been at
11 the meeting, to put this position in here
12 as being the one, the position person who
13 actually does the suspension, then that
14 would seem to follow that that would be
15 the one who would have been at the meeting
16 to do the suspending.

17 Q. Is there a requirement that a
18 meeting like that take place prior to a
19 suspension?

20 MR. COHEN: Objection, legal
21 conclusion. You can answer.

22 THE WITNESS: It says -- let's
23 see. It says here the administrator
24 receiving the complaint shall discuss

76 (Pages 298 to 301)

Page 302

1 the matter with the faculty member in
2 a confidential conference. So to me
3 that says there should be a
4 meeting --

5 MS. PEET: Okay.

6 THE WITNESS: -- with the
7 administrator.

8 BY MS. PEET:

9 Q. And a meeting took place,
10 correct?

11 A. We did have a meeting, yes.

12 Q. Okay.

13 The next policy is 252 through
14 257, faculty grievances and appeals.

15 Do you see that?

16 A. 262 to 260 --

17 Q. 252. Pardon me.

18 A. I'm sorry. 252.

19 Q. Okay. 257.

20 A. Okay.

21 Q. The faculty grievances and
22 appeals.

23 Do you see that?

24 A. Yes.

Page 303

1 Q. Do you allege that this policy
2 was violated?

3 A. Yes.

4 Q. And on what basis?

5 A. There was supposed to be a
6 separate committee to hear an appeal for
7 suspension, and that meeting would have
8 been solely to deal with suspension.

9 Q. Where does it say that there's
10 supposed to be a separate committee to
11 hear the suspension versus termination?

12 A. Let me see. Where does it say
13 -- this is the grievances and appeals
14 section. Is there a section about the
15 suspension? I don't see where that would
16 be. Would that be under progressive
17 discipline somewhere?

18 I know it's -- I recall reading
19 somewhere that one gets a committee for
20 suspension and termination and that the
21 policy says that the committee members for
22 each committee may or may not be the same,
23 that the president of the university
24 determines whether the members of the

Page 304

1 committee would be the same or not, but I
2 don't have it in front of me. I recall
3 that it's explicit that there are two
4 committees, one for suspension and one for
5 termination.

6 Q. Okay.

7 Any other basis for your belief
8 that the faculty grievances and appeals
9 policy was violated?

10 A. Well, the grievance committee
11 was grieving whether the procedures were
12 followed and the grievance committee said
13 they were, but we disputed that in terms
14 of there was no committee for the
15 suspension.

16 Q. Okay.

17 Anything else?

18 A. Not that I can recall right
19 now.

20 Q. Okay.

21 ---

22 (At this time, a document was
23 marked for identification as Exhibit
24 Fagal-26.)

Page 305

1 ---
2 BY MS. PEET:

3 Q. After you received the first
4 letter from Sister Munley, you then
5 received another statement of charges,
6 correct?

7 A. Yes, I believe on February 8th.

8 Q. And I believe it was in part
9 because perhaps something was missing and
10 your attorney advised Sister Munley that
11 and she --

12 A. Yes.

13 Q. -- provided a more full
14 context --

15 A. Correct.

16 Q. -- is that correct? Okay.

17 And that's what Exhibit-26 is,
18 correct, the revised statement of charges,
19 for lack of better words?

20 A. I see the February 8th, yes.

21 Q. Okay. On this policy there --
22 on this packet there's a policy that was
23 not attached to the last one which is on
24 224 through 225 towards the end of your

77 (Pages 302 to 305)

Page 306

1 packet, Marywood University's goals and
2 objectives.

3 Do you see that?

4 A. President's page, Marywood
5 University's goals and objectives. Okay.
6 I see it.

7 Q. Okay.

8 Do you believe that your videos
9 upheld what is provided here in Marywood
10 University's goals and objectives?

11 A. I can't remember reading this.

12 May I read it now, please?

13 Q. Of course.

14 - - -

15 (At this time, the witness
16 complies with request.)

17 - - -

18 THE WITNESS: Okay. I read the
19 goals and objectives.

20 BY MS. PEET:

21 Q. Okay.

22 My question to you was do you
23 believe that the videos upheld Marywood's
24 -- Marywood University's goals and

Page 308

1 core values in the workplace?

2 A. I -- we went through all those
3 just a short while ago.

4 Q. Right.

5 And the question is you believe
6 that you upheld the core values in the
7 workplace with those videos?

8 A. Yes. I -- yes, that's correct.

9 Q. Okay.

10 A. And the second set of bullets
11 there about the awareness, I don't -- I
12 just see that as being irrelevant. The
13 next four bullet points, I don't see
14 really the relevance there.

15 Q. Okay.

16 A. The last bullet point on the
17 page, employees will serve as role models
18 as socially responsible leaders. Again,
19 however one defines a socially responsible
20 leader, but I certainly tried to carry the
21 fire torch and do something I thought was
22 worthwhile. Others might not have agreed.

23 Q. Pun intended?

24 A. Yes, absolutely.

Page 307

1 objectives?

2 A. I don't know because, as I read
3 these, almost all of them pertain to
4 outcomes such as a majority of the
5 students who participate in service
6 opportunities in an ongoing way. I mean
7 how the videos would support, for
8 instance, that goal, I don't know. Maybe
9 the students would be inspired to say,
10 hey, maybe I can make a video some day and
11 maybe that would be a public service
12 video, maybe I too can use whatever.

13 Q. Are you suggesting the Hitler
14 videos would be a PSA, a public service
15 announcement?

16 A. No, but I'm suggesting that
17 once students see what can be done with
18 videos, they might be inspired to try it
19 themselves. The only thing I see it
20 implies to -- the fourth bullet says
21 employer -- employees will demonstrate
22 core values in the workplace, and we've
23 already discussed those.

24 Q. And you believe you upheld the

Page 309

1 Q. Okay.

2 On pages 209 --

3 A. And -- excuse me.

4 Q. Oh, you're not done?

5 A. No, no. Let me go to the last
6 one. Challenging instructional program.
7 I just want to say that I was a
8 challenging professor.

9 Q. Okay.

10 On pages 209 to -- bottom of
11 209 and top of 210, Sister Munley again
12 talks about that release document that she
13 attached and asked you to sign it if you
14 wanted to by Friday, February 17, 2012.

15 Do you see that?

16 A. As I recall, it was a Hobson's
17 choice where she was trying to speed up
18 the process of terminating me, which is
19 why I was advised not to sign that.

20 Q. Okay.

21 So is it fair to say that you
22 did not sign and return that document?

23 A. That's correct.

24 Q. And that document I'm referring

78 (Pages 306 to 309)

Page 310

1 to is the release of personal information
2 authorization form.

3 A. Yes, yes.

4 Q. You talked about the fact that
5 you had a -- you grieved your decision --
6 the decision, correct?

7 A. Yes. Excuse me.

8 The decision to do what?

9 Q. The suspension and
10 recommendation to terminate your
11 employment.

12 A. Yes.

13 ---

14 (At this time, a document was
15 marked for identification as Exhibit
16 Fagal-27.)

17 ---

18 BY MS. PEET:

19 Q. Did you ever see this letter
20 before?

21 A. I think -- I'm not sure. I
22 believe I saw this in discovery e-mails.

23 Q. Okay.

24 Do you have any reason to

Page 312

1 BY MS. PEET:

2 Q. On this document that has been
3 placed before you, is this set forth the
4 grievance that -- against President Munley
5 that you submitted to the committee?

6 A. Yes.

7 Q. Did you draft this grievance
8 that's contained on Exhibit-28?

9 A. I worked on this with my
10 attorney.

11 Q. Okay.

12 And this is the final product,
13 what you submitted?

14 A. Yes.

15 Q. Anyone else between -- besides
16 you and your attorney work on this?

17 A. No.

18 ---

19 (At this time, a document was
20 marked for identification as Exhibit
21 Fagal-29.)

22 ---

23 BY MS. PEET:

24 Q. Do you remember receiving this

Page 311

1 dispute that Dr. Sadlack was the chair of
2 the Faculty Grievance Committee?

3 A. No.

4 Q. Do you have any reason to
5 dispute that she advised President Munley
6 on or around March 19, 2012, that you
7 filed a grievance and that a committee has
8 been convened to review your complaint?

9 A. Yeah, that's what the letter --
10 yes.

11 Q. Okay.

12 You have no reason to dispute
13 that, correct?

14 A. No, no reason to disagree with
15 it.

16 Q. And to your knowledge, a
17 committee was ultimately formed?

18 A. To my knowledge, a committee
19 was ultimately formed.

20 ---

21 (At this time, a document was
22 marked for identification as Exhibit
23 Fagal-28.)

24 ---

Page 313

1 e-mail from Dr. Sadlack informing you that
2 they received your official grievance
3 regarding your suspension and termination?

4 A. Yes, I recall this.

5 Q. Did -- she says if there's any
6 additional information you would like us
7 to consider, please let me know.

8 Did you contact Dr. Sadlack
9 with additional information?

10 A. I can't recall for sure but I
11 think I did.

12 Q. What did you provide?

13 A. At some point, I believe I
14 submitted the explanation of the
15 scene-by-scene videos.

16 Q. And that's what we discussed
17 earlier today, right?

18 A. What we discussed earlier, at
19 least you had a copy of it, but I cannot
20 remember exactly whether it was this
21 committee or another committee that got
22 those.

23 Q. Okay.

24 Do you know whether or not the

79 (Pages 310 to 313)

Page 314

1 grievance committee met to discuss your
2 grievance?

3 A. I don't know for a fact. I was
4 told they met and discussed the grievance.
5 I got a report that they discussed the
6 grievance.

7 Q. Were you involved at all in
8 their decision-making or thought process?

9 A. I wasn't involved in their
10 thought process or decision-making, no.

11 Q. Okay.

12 To your knowledge, did the
13 grievance committee ultimately make a
14 decision with reference to your grievance?

15 A. The grievance committee
16 informed me by an e-mail that they
17 examined the grievance and found it
18 wanting and...

19 ---

20 (At this time, a document was
21 marked for identification as Exhibit
22 Fagal-30.)

23 ---

24 BY MS. PEET:

Page 316

1 about there being no specific committee to
2 deal with the appropriateness of the
3 suspension.

4 Q. Okay.

5 So you disagreed with the
6 grievance committee's findings?

7 A. Yes.

8 Q. Did Sister Munley sit on the
9 grievance committee, to your knowledge?

10 A. I don't know.

11 Q. Do you have any --

12 A. I don't -- I don't --

13 Q. -- knowledge that she did?

14 A. No knowledge that she did. I
15 don't know if there's any contact. I
16 don't know.

17 Q. Do you -- same question for
18 Dr. Levine.

19 Do you have any knowledge of
20 whether or not he sat on the committee?

21 A. No knowledge. I presume he did
22 not.

23 Q. Okay.

24 Likewise, do you presume Sister

Page 315

1 Q. Is this the e-mail that you
2 received from Dr. Sadlack with reference
3 to the grievance committee's findings?

4 A. Yes. This is what I was just
5 referring to.

6 Q. Okay.

7 And she writes we have found no
8 evidence of improper action on President
9 Munley's part which would constitute a
10 legitimate grievance.

11 Do you see that?

12 A. I see that.

13 Q. Do you disagree with
14 Dr. Sadlack and the committee's decision?

15 A. Yes.

16 Q. Okay.

17 And what do you disagree with?

18 A. Well, she mentions the five
19 things here; the issue of which individual
20 was doing the suspending, whether I was a
21 cause of immediate harm to myself or
22 others, whether there was no progressive
23 discipline in the sense of a chance for
24 any remediation, and then the last one is

Page 317

1 Munley did not sit on the committee?

2 A. I presume she was not an
3 official committee member.

4 Q. Is it fair to say that Sister
5 Munley did not stop you from filing a
6 grievance?

7 A. That would -- Sister Munley did
8 not stop me from filing a grievance.

9 ---

10 (At this time, a document was
11 marked for identification as Exhibit
12 Fagal-31.)

13 ---

14 BY MS. PEET:

15 Q. What has been marked as
16 Exhibit-31 is -- are e-mail exchanges
17 between you and Dr. Sadlack about your
18 grievance.

19 Do you see that?

20 A. Yes.

21 Q. Do you remember having these
22 e-mails with Dr. Sadlack?

23 A. Let me look at them. Yes, on
24 the first page here.

80 (Pages 314 to 317)

Page 318

1 Q. If you look at document DEF295,
2 which is towards the end.
3 A. 295, okay.
4 Q. Which is an e-mail -- the top
5 one is an e-mail from Erin to you dated
6 March 29, 2012, at 5:03 p.m.
7 Do you see that?
8 A. It's from Sister Gail Cabral to
9 me. Oh, wait, wait. I'm sorry.
10 Q. She's copied on the letter.
11 A. Wait, wait. I'm sorry. I'm
12 sorry. That was -- right. From the
13 bottom of the previous page, it's from
14 Sadlack to me with a copy to Cabral,
15 right.
16 Q. Okay.
17 A. So dear Fred, okay.
18 Q. She says -- she being Erin says
19 all I can do is say what I did in the
20 letter, that we checked the policy wording
21 carefully and did not find a violation of
22 procedure in any of the five instances you
23 grieved.
24 Do you see that?

Page 319

1 A. Yes.
2 Q. She also wrote in addition, the
3 policy manual states that the findings of
4 the grievance committee cannot themselves
5 be grieved.
6 Do you see that?
7 A. Yes.
8 Q. Do you disagree with that?
9 A. No.
10 Q. And then she then writes please
11 note that our findings do not preclude
12 your appealing the termination itself
13 through an ad hoc committee as outlined in
14 the progressive discipline policy.
15 Do you see that?
16 A. I see that.
17 Q. And then it says if you want to
18 do that, you need to contact Sister Gail
19 Cabral as faculty senate president to
20 exercise that option.
21 Do you see that?
22 A. Yes.
23 Q. And in fact Sister Cabral is
24 copied on that e-mail, correct?

Page 320

1 A. Yes.
2 Q. Did you then request an ad hoc
3 committee be put together to review Sister
4 Munley's decision?
5 A. Sister Munley's decision to?
6 Q. Suspend and term -- and
7 recommend your termination of employment.
8 A. Yes.
9 ---
10 (At this time, a document was
11 marked for identification as Exhibit
12 Fagal-32.)
13 ---
14 BY MS. PEET:
15 Q. Exhibit-32 is an e-mail from
16 you to Sister Munley regarding your
17 request for an ad hoc faculty committee,
18 correct?
19 A. Correct.
20 Q. And it's dated March 29, 2012,
21 correct?
22 A. Correct.
23 Q. Was your request granted?
24 A. Yes.

Page 321

1 Q. Did anyone assist you in
2 drafting that letter?
3 A. This letter here? I believe my
4 -- consulted with my attorney.
5 Q. Okay.
6 ---
7 (At this time, a document was
8 marked for identification as Exhibit
9 Fagal-33.)
10 ---
11 BY MS. PEET:
12 Q. Do you recall receiving this
13 letter from Sister Munley dated April 3,
14 2012?
15 A. Yes. I recall receiving this
16 letter.
17 Q. Okay.
18 And she has agreed to convene
19 an ad hoc committee to appeal the
20 decisions, correct?
21 A. Let me see here now. This is
22 April 3rd and the second sentence says
23 chose to file a grievance under the
24 Marywood University grievance and appeals

81 (Pages 318 to 321)

Page 322

1 policy. That part of the statement is
2 true.

3 Q. Okay.

4 A. Chose not to convene an ad hoc
5 committee to review my recommendations as
6 I had offered you on two occasions. I
7 presume there she's talking about those
8 two cases where, as I put it, she was
9 trying to speed up the policy.

10 Q. The release documents?

11 A. Speed up the release documents,
12 that's correct.

13 Q. And you agree you did not --

14 A. I did not --

15 Q. -- sign and submit them?

16 A. -- sign those, that's correct.

17 Q. Okay.

18 A. Faculty Grievance Committee
19 reviewed your grievance, found no evidence
20 of improper action on my part. Okay. And
21 she said the grievance process is now
22 complete, decide to finalize my
23 recommendation. As a result, your
24 employment with Marywood and your tenure

Page 323

1 are terminated effective today, April 3,
2 2012.

3 Q. Okay.

4 A. Okay.

5 So at this point I am done.

6 Q. Okay.

7 She tells --

8 A. And then she offers a chance to
9 review what has been said is a -- really a
10 final recommendation.

11 Q. Okay.

12 A. But she did terminate me. She
13 says I am terminated as of April 3rd.

14 Q. Okay.

15 Did you select a tenured
16 faculty member to be included on the ad
17 hoc committee?

18 A. Yes.

19 Q. And did you submit a name to
20 Sister Cabral?

21 A. Yes.

22 Q. And did you choose Ed O'Brien?

23 A. Yes.

24 Q. And was Ed O'Brien indeed

Page 324

1 selected to the committee?

2 A. Yes.

3 Q. Why did you choose Ed O'Brien?

4 A. I'd known him for many years.

5 I knew he was intelligent and I knew he
6 had -- we worked together on the academic
7 commuting -- computing committee, and so I
8 had worked with Ed before and I knew that
9 he would probably be -- because of his
10 status he would be allowed to be chosen.

11 ---

12 (At this time, a document was
13 marked for identification as Exhibit
14 Fagal-34.)

15 ---

16 BY MS. PEET:

17 Q. Did you receive this e-mail
18 from Sister Cabral on April 30, 2012?

19 A. Let me see. I -- yes, I did
20 receive this.

21 Q. Did you assert any objection to
22 Dr. Bittel and Mr. Povse being selected as
23 the other individuals on the committee?

24 A. I did not, but at the time I --

Page 325

1 looking back, I might wish I had grieved
2 one of them.

3 Q. Okay.

4 Why is that?

5 A. Mr. Povse, who I do not know --
6 I believe he's a tenured professor, of
7 course, but his wife has a -- had a
8 nontenured position at Marywood. And so
9 looking back after I learned that, I
10 thought there might have been a little
11 conflict of interest there because if the
12 committee didn't come up with the approved
13 decision and President Munley, let's say,
14 found out that Mr. Povse had supported me,
15 that might not have been good for his
16 wife. I'm not saying that would have
17 happened. I'm just saying there would be
18 what they call a potential conflict of
19 interest.

20 Q. Okay.

21 And, again, you didn't assert
22 any objection, correct?

23 A. I did not, no. I did not know
24 that relationship at the time.

82 (Pages 322 to 325)

Page 326

1 MS. PEET: Okay. Let's change
2 the tape.
3 THE VIDEOGRAPHER: We're now
4 off the record. The time is 4:52
5 p.m. This ends disk number three.
6 ---
7 (At this time, a short break
8 was taken.)
9 ---
10 THE VIDEOGRAPHER: We are now
11 on the record. The time is 4:57 p.m.
12 This starts disk number four.
13 ---
14 (At this time, a document was
15 marked for identification as Exhibit
16 Fagal-35.)
17 ---
18 BY MS. PEET:
19 Q. Did you prepare this e-mail to
20 Alan Levine dated April 25, 2012?
21 A. Did I prepare? Would you
22 rephrase the question?
23 Q. Did you draft this e-mail?
24 A. I believe I worked on this with

Page 327

1 my lawyer.
2 Q. Okay.
3 Anyone else?
4 A. No.
5 ---
6 (At this time, a document was
7 marked for identification as Exhibit
8 Fagal-36.)
9 ---
10 BY MS. PEET:
11 Q. Did you draft this e-mail and
12 the document to be sent to the ad hoc
13 committee?
14 A. This is the May 6, 2012, one,
15 Exhibit --
16 Q. Correct.
17 A. -- 36?
18 Q. Uh-huh.
19 A. Yes.
20 Q. Okay.
21 And you write that the
22 progressive discipline policy doesn't
23 provide for the person charged with the
24 chance to present a defense but,

Page 328

1 nonetheless, you decided to submit a
2 written defense to the charges, agreed?
3 A. Yes. I thought it was -- yes.
4 Q. Okay.
5 Did anyone help you draft this?
6 A. Yes.
7 Q. All right.
8 And who was that?
9 A. It would have been Jonathan
10 Cohen, my lawyer.
11 Q. Anyone else?
12 A. No.
13 ---
14 (At this time, a document was
15 marked for identification as Exhibit
16 Fagal-37.)
17 ---
18 BY MS. PEET:
19 Q. Why did you e-mail the ad hoc
20 committee on May 23, 2012, about your
21 personnel file?
22 A. As I read here, it says I've
23 given Patricia Dunleavy permission to
24 release the new documents in my personnel

Page 329

1 file. As I recall, my personnel file was
2 released earlier in the semester or in the
3 year and later on Marywood discovered that
4 not all relevant items that they found,
5 wherever they found them, had been turned
6 over. And so Patricia Dunleavy sent me an
7 e-mail asking if she could release those
8 documents.
9 Q. Did you have any concern that
10 the committee would consider previous
11 disputes that you had with the university
12 in making its decision?
13 A. I was only concerned in the
14 sense that I would hope they would look
15 at, you know, the surrounding details of
16 what had occurred and not just say, oh, he
17 got called on the carpet three times, so
18 he must be a bad boy.
19 Q. Do you agree that you had
20 previous disputes with Marywood
21 administration involving the issue of free
22 speech?
23 A. Yes.
24 Q. And would you agree that with

83 (Pages 326 to 329)

Page 330

1 those previous issues you've had, you were
2 never terminated?

3 A. Correct.

4 Q. Would you agree that the
5 previous disputes that you had with
6 Marywood about free speech but they never
7 suspended you?

8 A. That's correct.

9 Q. To your knowledge, was an ad
10 hoc committee -- I believe you testified
11 the ad hoc committee was ultimately
12 formed --

13 A. Yes.

14 Q. -- per your request, correct?

15 A. An ad hoc committee was formed
16 to examine my -- I believe the phrase was
17 termination and suspension.

18 Q. Okay.

19 And, to your knowledge, did the
20 committee make a decision?

21 A. Yes.

22 Q. And what was that decision?

23 A. That I should be terminated.

24 Q. To your knowledge, did Sister

Page 332

1 the second committee that was formed about
2 your suspension and termination and they
3 found no wrongdoing on Munley's part?

4 A. I recall a grievance committee
5 and the ad hoc committee but not a
6 committee for the suspension.

7 Q. Okay.

8 Both the grievance committee
9 and the ad hoc committee both concluded no
10 wrongdoing on Sister Munley's part,
11 correct?

12 A. I believe the charge for the
13 grievance committee was to see whether
14 procedures had been followed correctly and
15 there was found no wrongdoing by President
16 Munley's part. The ad hoc committee was
17 not, I believe, examining whether Anne
18 Munley did anything wrong but whether I
19 did anything wrong. So...

20 Q. And did the ad hoc committee
21 find that you did anything wrong?

22 A. Yes. They terminated -- they
23 agreed with her decision to terminate me.

24 Q. Okay.

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1 Munley sit on that ad hoc committee?

2 A. Not to my knowledge.

3 Q. To your knowledge, did
4 Dr. Levine sit on that committee?

5 A. Not to my knowledge.

6 Q. There were three members on
7 that committee, correct?

8 A. Correct.

9 Q. And you selected one of those
10 members, correct?

11 A. Correct.

12 ---

13 (At this time, a document was
14 marked for identification as Exhibit
15 Fagal-38.)

16 ---

17 BY MS. PEET:

18 Q. Did you ever see the ad hoc
19 committee's findings with reference to
20 your employment and tenure at Marywood?

21 A. I saw them recently in
22 discovery.

23 Q. Okay.

24 Would you agree that this is

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1 And the folks on the ad hoc
2 committee were different people than were
3 on the grievance committee?

4 A. I believe they were all
5 different, yes.

6 ---

7 (At this time, a document was
8 marked for identification as Exhibit
9 Fagal-39.)

10 ---

11 BY MS. PEET:

12 Q. Did you send this e-mail to the
13 ad hoc faculty committee on July 6, 2012?

14 A. I sent this, yes.

15 Q. If the ad hoc committee agreed
16 that you should have been terminated, what
17 does it matter whether or not your
18 suspension was justified?

19 A. Well, procedures say first
20 things first. As part of the sequence,
21 you do the suspension and then you see if
22 there's any hope for remediation or any
23 change that would maybe be satisfactory to
24 the university from their point of view

84 (Pages 330 to 333)

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1 and then go on from there.

2 Q. If a committee who was formed
3 to determine whether or not your behavior
4 warranted termination determined that your
5 behavior in fact warranted termination,
6 wouldn't a committee to review the
7 suspension based on the exact same conduct
8 be moot?

9 A. I don't know if it'd be moot
10 because if -- you might have somebody --
11 if I could -- let's say somebody was
12 accused of -- being a faculty member, they
13 were accused of absconding funds from
14 clubs treasury, and so there's enough
15 evidence that came out and somebody says
16 well, let's suspend professor -- this
17 professor for doing this.

18 So let's say there was some
19 evidence of irregularities on that
20 committee. I might say, okay, this person
21 is not a harm to anybody. We don't see
22 this is going to affect the teaching.
23 Let's see where it goes. And so the
24 professor does not get suspended and then

Page 336

1 suspension? What substantively and --

2 A. There was no --

3 Q. -- purpose would that serve?

4 A. -- committee to -- I was
5 suspended and I was not allowed to have a
6 committee to review the suspension.

7 Q. If a committee -- and that's
8 not my question.

9 A. Okay.

10 Q. If a committee substantively
11 looks at your termination and concludes
12 that your termination was appropriate --

13 A. Okay.

14 Q. -- which has happened here,
15 correct?

16 A. Okay.

17 Q. Agreed?

18 A. Agreed.

19 Q. Then why have a committee
20 review your suspension which is a lesser
21 offense based on the exact same conduct?
22 What purpose would that serve?

23 A. The purpose it would serve
24 would be following the agreed procedures.

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1 it comes out that he or she had in fact
2 squirrelled away not just 50 bucks that he
3 forgot about recording but had been taking
4 a lot off the top for years, then that
5 could be grounds for terminating even
6 though the person was not suspended
7 initially.

8 And you could have -- of course
9 if it says do the suspension and do the
10 termination, if it was an egregious case
11 you could say we'll have a suspension
12 hearing today and a termination hearing in
13 the afternoon, so we'll go morning,
14 afternoon. We'll suspend and then we'll
15 terminate and we'll follow our laws on the
16 same -- our procedures on the same
17 evidence, but at least you would follow
18 procedures of doing the suspension first
19 and then the termination.

20 Q. If a -- if a committee
21 determines that your termination was
22 justified on the same conduct for which
23 you were suspended, why would a committee
24 need to be formed to review your

Page 337

1 Q. Any other purpose?

2 A. I'll say no.

3 Q. Okay.

4 What damages did you incur from
5 a committee that upheld a termination of
6 employment but, in your opinion, didn't
7 look at your suspension?

8 A. The damages would be somebody
9 thinking they did not get a fair -- a fair
10 deal. They did not have the -- should we
11 say the law it followed which by itself is
12 -- is not -- not right.

13 Q. Any other damages?

14 A. Do you mean financial damages?

15 Q. I'm asking you.

16 A. I don't know.

17 Q. Okay.

18 A. If I might say -- can I amend
19 my answer a little bit?

20 Q. Sure.

21 A. By not having a suspension,
22 there was no chance for remediation and
23 that -- with remediation then perhaps an
24 agreement could have been -- you know,

85 (Pages 334 to 337)

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1 then maybe I would not have been
2 terminated.

3 ---

4 (At this time, a document was
5 marked for identification as Exhibit
6 Fagal-40.)

7 ---

8 BY MS. PEET:

9 Q. Did you receive this July 13,
10 2012, letter from Sister Munley to you?

11 A. Yes.

12 Q. She says here that this was the
13 second independent tenured faculty review
14 accorded to you. Both faculty committees
15 concurred with my decision.

16 Is that a true statement?

17 A. I -- the two committees we're
18 presuming here are the grievance committee
19 and the ad hoc committee on the
20 termination, yes.

21 Q. And is that an accurate
22 statement?

23 A. Yes.

24 Q. Okay.

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1 newspapers, Web sites?

2 A. My son was in the job market at
3 the time, so I knew that there were Web
4 sites. So I would go to the -- I think
5 Inside Higher Education had some and the
6 Chronicle of Higher Education had some job
7 things, and I would look through -- look
8 through those and there were big -- big
9 listings, and then at some point in 2013 I
10 saw the Chronicle of Higher Education had
11 a service where you could -- you would
12 sign up, you would say you were, let's
13 say, an art professor looking for jobs in
14 the Rochester, New York, vicinity within a
15 certain radius. So I signed up to get the
16 Chronicle of Higher Education job
17 announcements.

18 Q. Okay.

19 Did you -- you have produced
20 documents in this case about job postings
21 that I guess you saw following your
22 termination of employment.

23 Have you produced, to the best
24 of your knowledge, all documents that

Page 339

1 She then says my decision to
2 terminate your employment with Marywood
3 University and your tenure effective
4 April 3, 2012, stands.

5 A. Yes.

6 Q. Do you see that?

7 A. Uh-huh.

8 Q. Are you currently employed?

9 A. No.

10 Q. Have you looked for a job since
11 your termination of employment at
12 Marywood?

13 A. Yes.

14 Q. Okay.

15 When was the first time you
16 looked for a job?

17 A. I was looking at newspaper
18 advertisements in the Syracuse newspaper
19 in the fall of 2012.

20 Q. Did you apply for any jobs?

21 A. No. I didn't see any that were
22 applicable.

23 Q. Other than in the Syracuse
24 newspaper, did you look at any other

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1 evidence job search efforts that you've
2 undergone since your employment at
3 Marywood was terminated?

4 A. Yeah. I don't -- I don't have
5 -- when I would look through the
6 classified ads in the Syracuse newspaper,
7 I did not keep a record of that, but since
8 2013 there's a record.

9 Q. Okay.

10 And everything that you have
11 has been produced?

12 A. Yes.

13 Q. Okay.

14 Approximately how many -- how
15 much time per week beginning in the fall
16 of 2012 did you spend trying to find a
17 job?

18 A. Those e-mail announcements
19 would come out probably weekly. Sometimes
20 you get two a week. It would depend
21 perhaps on the season, and I would read
22 those and scroll down the list depending
23 how long the list was and that was
24 probably -- to look at that list and I'd

86 (Pages 338 to 341)

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1 open the e-mail, you know, five or ten
2 minutes, read -- read the description, see
3 if anything looked promising.

4 Q. Did you spend more or less than
5 one hour a week since the fall of 2012
6 looking for a job?

7 A. It would probably be about --
8 it would be less than one hour.

9 Q. Okay.

10 What were you doing with all of
11 your spare time?

12 A. I did have some employment at
13 the YMCA as a lifeguard instructor and
14 teaching some swim classes. That's
15 tapered off recently with a different
16 aquatics director.

17 Q. Approximately how much money
18 did you earn from the YMCA?

19 A. Depending on the year, I'd have
20 to look. I think I have maybe -- maybe
21 about \$500.00.

22 Q. You're an avid swimmer,
23 correct?

24 A. Yeah. I swim regularly to try

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1 conceive how I could have said it.

2 Q. Why don't you tell us.

3 A. The Complaint I read just
4 recently -- and I was surprised to read it
5 -- was from two students, one name was
6 Callahan and I can't remember the other.

7 Q. You don't need to mention the
8 students on the record.

9 A. Okay.

10 And there was a complaint along
11 the lines you said, and I'm thinking this
12 is during the -- this is in August. It
13 would be the first week of class. I
14 wouldn't even know any students, and I
15 said could I have said that. Number one,
16 I'd say I would never have said that to a
17 student.

18 Number two, if I had said that,
19 it could have been -- and I don't say -- I
20 don't think I did this, but it would have
21 been along the lines of this is
22 introduction to social science, we're
23 going to examine human behavior, and it
24 comes from many different sources, shall

Page 343

1 to stay in shape.

2 Q. Did you ever refer to students
3 as thunder thighs and in words or
4 substance tell them that they probably
5 should spend more time in the pool than in
6 your class?

7 A. I saw that, and the answer
8 would be I would have to say I never told
9 a student that they should do that.

10 Would you repeat the question,
11 please?

12 Q. Sure.

13 Did you ever call any students
14 thunder thighs?

15 A. No.

16 Q. Did you ever use the word
17 "thunder thighs"?

18 A. I don't recall but I really
19 don't think so.

20 Q. Okay.

21 So if a student said that you
22 did, they would be lying?

23 A. Depends how they told the
24 story. I could tell you how I can

Page 345

1 we say. One of those sources that people
2 might have their behavior changed would be
3 by economic incentives, and I'm trying to
4 conceive how I could possibly have said
5 such a thing.

6 I might have said some
7 employers now even have wellness plans
8 where they will subsidize your gym
9 membership. Again, this would be me
10 speaking in front of a whole class, and I
11 can conceive of myself as saying so the
12 incentive -- you know, the employers want
13 employees to lower health costs, and lose
14 weight, and lose -- you know, lose your
15 thunder thighs. So you go to the -- you
16 know, you're pool membership would be
17 subsidized.

18 So it would have been -- if I
19 had said such a thing, it would have been
20 a very general context such as that. I
21 would never have said to a student, you
22 have thunder thighs, you should go
23 swimming and not come to class. That --
24 no.

87 (Pages 342 to 345)

Page 346

1 Q. Do you dispute that students
2 made that complaint to the university?

3 A. The little bit I read seemed to
4 me as if the students were in some sort --
5 had been in some sort of trouble
6 themselves, that they had violated some
7 university rules and were consulting with
8 somebody, I think, from student activities
9 and there's some sort of conversation. So
10 whether -- what the motives of the
11 students to say such a -- such a thing was
12 I have no idea.

13 Q. Do you know whether or not the
14 university had problems enrolling students
15 in your class?

16 A. Yes.

17 Q. Okay.

18 Why do you think that was?

19 A. Well, I was probably the
20 hardest grader on campus, perhaps the
21 hardest grader, and so sometimes if one
22 can take a course and avoid -- you know,
23 get a better grade off campus than on
24 campus then I understand that incentive.

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1 Q. Are you aware of a Muslim
2 student complaining -- filing a civil
3 complaint against you about a cartoon that
4 you posted on your door?

5 A. Yes.

6 Q. And what was the cartoon about?

7 A. The cartoon -- well, there was
8 -- there as a famous cartoon about the
9 Muhammad bomb cartoon where the Danish
10 embassies were bombed because
11 Jyllands-Posten had posted a -- had
12 published drawings of Muhammad, and over
13 the years I would often have news stories
14 on my door of various -- various kinds,
15 and this was a news story. I had that on
16 my door.

17 I had -- in terms of cartoons,
18 there was another one I might have had --
19 I don't know which -- I can't remember
20 which cartoon he was complaining about
21 specifically at this point. That might
22 have been it.

23 Q. Is there a lot of them?

24 A. At one point, I might have had

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1 a -- again, a newsworthy cartoon by
2 another European person. I had a joke I
3 think he was -- Akhar(ph) was complaining
4 about. It was a -- it wasn't a cartoon.
5 It was a photograph of about eight nuns
6 from 1958 or so, based on their hats, and
7 they were all carrying 22 rifles. They
8 had been to the rifle range or something,
9 and so I had a joke up there about Islamic
10 terrorists, radical Muslim committed a
11 suicide bombing and died himself. These
12 would be the 72 virgins he would see in
13 heaven.

14 Q. Do you understand how a Muslim
15 could be offended by that?

16 A. Yes, I guess I do.

17 Q. In your complaint, part of the
18 relief that you ask for is to be returned
19 to Marywood.

20 Is that something you want?

21 A. As I get older -- you know, if
22 I did go back, it would be for probably a
23 couple of years because I'm 70 years old
24 now, but I would do it.

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1 ---
2 (At this time, a document was
3 marked for identification as Exhibit
4 Fagal-41.)

5 ---
6 BY MS. PEET:

7 Q. Who's Linda Rose?

8 A. Linda Rose is my -- one of my
9 two sisters.

10 Q. Okay.

11 And you're e-mailing with her
12 on June 6, 2012.

13 Do you see that?

14 A. Uh-huh.

15 Q. And sort of in the middle of
16 the page you write to her I don't really
17 want the job back but part of me would
18 love to go back to work for even just a
19 year just to say -- in caps -- fuck you, I
20 won.

21 Do you see that?

22 A. Let me see.

23 Now, where are we?

24 Q. The middle of the page.

88 (Pages 346 to 349)

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1 A. Yes. I don't really want the
2 job but part of me -- right. You know,
3 with all the hassles, there's certain bad
4 parts about going back to work but part of
5 me would love to go back to work for even
6 just a year just to say what I -- what's
7 here.
8 Q. The fuck you, I won?
9 A. Fuck you, I won.
10 Q. And the job that you're talking
11 about there, that would be the Marywood
12 University job --
13 A. Yes.
14 Q. -- correct?
15 A. That's correct.
16 ---
17 (At this time, a document was
18 marked for identification as Exhibit
19 Fagal-42.)
20 ---
21 BY MS. PEET:
22 Q. Who is Jeffy Benedict?
23 A. She's my other sister.
24 Q. Okay.

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1 You e-mail Jeffy on
2 December 25, 2011, at 9:40 p.m., so
3 Christmas 2011.
4 Do you see that?
5 A. Yes.
6 Q. The bottom e-mail, and you
7 write to her, hi, Jeffy, just in case I
8 need or want one, please see if Jim can
9 come up with a few names of good labor,
10 dash, employment law lawyers, dash, firms
11 in PA, period.
12 A. Yes.
13 Q. Do you see that?
14 A. I do see that.
15 Q. Okay.
16 And who is Jim?
17 A. Jim is Jim Benedict.
18 Q. Would that be her husband?
19 A. That's her husband, yes.
20 Q. Your brother-in-law?
21 A. My brother-in-law.
22 Q. Okay.
23 And then her response is right
24 above that.

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1 Do you see that?
2 A. Yes.
3 Q. And she wrote, Fred, I asked
4 Jim -- her husband, correct?
5 A. Yes.
6 Q. And he has no clue about any
7 labor lawyers in Penn --
8 A. Right.
9 Q. -- period.
10 And Penn I would assume is
11 Pennsylvania --
12 A. Pennsylvania, uh-huh.
13 Q. -- correct? Okay.
14 And then she -- and I know he
15 thinks this is a little nuts at your age,
16 period.
17 A. Right.
18 Q. Okay.
19 He does not want to get
20 involved in any way in this one.
21 A. Right.
22 Q. See that?
23 A. Uh-huh.
24 ---

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1 (At this time, a document was
2 marked for identification as
3 Exhibit-43.)
4 ---
5 BY MS. PEET:
6 Q. Why were you inquiring about a
7 labor or employment lawyer in December of
8 2011?
9 A. Because I had started to work
10 on the videos and I realized that they
11 might be problematic.
12 Q. And you might need a lawyer?
13 A. If worse came to worst.
14 Q. Okay.
15 Exhibit-43 seems to be a letter
16 that you sent to Onondaga Community
17 College --
18 A. Yes.
19 Q. -- on January 11, 2013.
20 Do you see that?
21 A. Correct.
22 Q. Okay.
23 And in the first introductory
24 paragraph, you tell the community college

89 (Pages 350 to 353)

Page 354

1 that you got fired last year over a free
2 speech issue and then direct them to your
3 resume for more information.

4 Do you see that?

5 A. Yes.

6 Q. Was that your practice to tell
7 any college or university to whom you were
8 seeking employment about this free speech
9 issue for which you got fired over at
10 Marywood, in your opinion?

11 A. Well, this is a sample of one,
12 so this was my practice because this was
13 the only application that got this far.

14 Q. Okay.

15 Would you agree with -- that
16 this is the only application you submitted
17 to any university or college since April
18 of 2012?

19 A. Yes.

20 ---

21 (At this time, a document was
22 marked for identification as Exhibit
23 Fagal-44.)
24 ---

Page 355

1 BY MS. PEET:

2 Q. Would you agree that this is
3 the resume that you submitted to Onondaga
4 Community College?

5 A. Yes. This seems to be part of
6 their online application form as I recall.

7 Q. Okay.

8 And on the third page of this
9 document, it's a one-page resume from you.

10 Do you see that?

11 A. Yes.

12 Q. And the second to last
13 paragraph is called other perhaps of
14 interest.

15 A. Yes.

16 Q. Do you see that?

17 A. Uh-huh.

18 Q. And then you talk about the
19 poster, and this YouTube videos, and your
20 firing.

21 Do you see that?

22 A. Yes.

23 Q. Do you think it's a good
24 practice to include that in a resume for

Page 356

1 employment?

2 A. I think it shows honesty and it
3 doesn't hide anything. If I was an
4 employer and somebody applied and they did
5 not include that, and then the employer
6 Googles the person and says what the heck
7 is going on here, why didn't you tell me
8 about that. I thought it was better to be
9 honest and straightforward.

10 Q. Okay.

11 Did you receive any call back
12 or interview from the community college?

13 A. Not to go in for an interview.
14 I think it might have been some form. I
15 can't recall anything special.

16 Q. Okay.

17 Do you know why it is that they
18 didn't pursue you further?

19 A. I was really looking for a
20 full-time job and this might -- they might
21 have gone with adjuncts cheaper. I don't
22 know. Because I had worked there before,
23 so I figured they knew me. So that was...
24 ---

Page 357

1 (At this time, a document was
2 marked for identification as Exhibit
3 Fagal-45.)
4 ---

5 BY MS. PEET:

6 Q. Would you agree this is an
7 e-mail between you and Bill Ziegelbauer,
8 February 5, 2015?

9 A. Yes.

10 Q. Okay.

11 And if you look down at the
12 bottom of the first page, the paragraph
13 says I am probably overdoing this, Rule 26
14 damages stuff.

15 Do you see that?

16 A. Yeah, bottom of the first --

17 Q. First page.

18 A. -- page. Oh, yeah.

19 Q. I'm going to read --

20 A. The paragraph, yes. I'm
21 probably overdoing this, uh-huh. I see
22 that.

23 Q. I am probably overdoing this
24 Rule 26 damages stuff, but at the worst I

90 (Pages 354 to 357)

Page 358

1 will make the other side spend a lot of
2 hours poring through what I have done.
3 What's the old phrase? Baffle them with
4 bullshit and bury them in paper.

5 A. Yes.

6 Q. Was that your litigation
7 strategy here?

8 A. No.

9 Q. Were you trying to bury them in
10 paper and baffle them with bullshit to
11 increase Marywood's litigation costs?

12 A. No.

13 Q. Were you trying to make the
14 other side spend a lot of hours poring
15 through what they have done so we can --
16 Marywood can spend more money on this
17 litigation?

18 A. No.

19 Q. What were you saying here?

20 A. I was developing a
21 comprehensive report about the damages and
22 I was using every economist skill I had to
23 make spreadsheets that clearly were
24 commented and explained all the details of

Page 359

1 each calculation of damages, and the basic
2 report, you know, with revisions is about
3 42 pages not including appendixes, but the
4 reference here to baffle them with
5 bullshit is -- it's a joke, obviously, but
6 it refers -- I'm really referring to the
7 fact that probably most lawyers are not
8 economists and when they read my Rule 26
9 damages computation report, if they wanted
10 to truly understand it -- but I tried to
11 make it as clear as possible, but if they
12 wanted to truly understand where each
13 figure came from, they would need good
14 spreadsheet skills and that would take a
15 lot of good effort on their part, and
16 that's what I was referring to.

17 Q. Do you understand how people
18 just might not get your humor?

19 A. Yes. If you look at the next
20 sentence, but on the other hand, I want to
21 early on put the best foot forward.

22 Q. Right.

23 But if you read the sentence
24 before, it says I want to make the other

Page 360

1 side spend a lot of hours poring through
2 what I have done.

3 A. Right. Because the way I
4 understand litigation on this end, it
5 would be if it comes toward trial, let's
6 say, then when it comes to economic
7 damages one would be hiring forensic
8 economics experts and they're not cheap.
9 I know that.

10 And so I wanted to do all the
11 heavy duty forensic economic type work
12 that could possibly be done by me, get it
13 done early, and so the Rule 26 damages
14 computation report would be as complete as
15 possible, really complete. And then I was
16 hoping further on down the road that
17 perhaps a forensic expert might look at
18 what I did and say, oh, Fagal has done
19 most of my homework. It will take me many
20 fewer hours, therefore, to write up a
21 report that I can present as something I
22 would testify to as my analysis. And so I
23 was trying to do huge amounts of work
24 ahead of time.

Page 361

1 Q. How much have you spent in
2 litigation fees to date?

3 MR. COHEN: No, don't answer
4 that.

5 MS. PEET: Are you instructing
6 him not to answer?

7 MR. COHEN: Can we go off the
8 record for a second?

9 MS. PEET: Sure.

10 ---

11 THE VIDEOGRAPHER: We are now
12 off the record. The time is 5:35
13 p.m.

14 ---

15 MR. COHEN: Can I just get a
16 sense of what the purpose of your --
17 this question is?

18 MS. PEET: Which question?

19 MR. COHEN: How much have you
20 spent on litigation fees.

21 MS. PEET: Because it goes --
22 if you read the thousands of
23 documents he's produced, he talks
24 about the fact that he's -- what his

91 (Pages 358 to 361)

Page 362

1 budget is going to be in order to
2 make Marywood spend as much as
3 possible; hence, baffle them with
4 bullshit and bury them in paper.

5 If you're instructing him not
6 to answer, that's fine. We can take
7 it up with the court if necessary.
8 That's up to you.

9 MR. COHEN: I'm instructing you
10 not to answer for now.

11 - - -

12 THE VIDEOGRAPHER: We are now
13 on the record. The time is 5:36 p.m.

14 - - -

15 BY MS. PEET:

16 Q. I've asked you what you have
17 spent on litigation fees to date and your
18 attorney has instructed you not to answer.

19 A. Right.

20 Q. And I assume you're going to
21 take your attorney's instruction.

22 A. I'll take my attorney's advice.

23 Q. Okay.

24 Do you know Tony Spinillo?

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1 e-mailed him that at his Marywood e-mail
2 account?

3 A. I hadn't thought about it. We
4 always had e-mail conversations or back
5 and forth with his personal account.

6 Q. Did you ever e-mail Tony since
7 you have left at his Marywood e-mail
8 account?

9 A. Since I left Mary -- could you
10 repeat the question, please?

11 Q. Have you ever e-mailed Tony
12 Spinillo at his Marywood e-mail account
13 since you've left Marywood?

14 A. I'll say I don't know but I
15 don't think so.

16 Q. Has Tony provided you with any
17 documentation or information about this
18 case?

19 A. No.

20 Q. Who, if anyone, do you speak to
21 that is employed at Marywood?

22 A. I have e-mail contact with
23 Marty O'Connor.

24 Q. Anyone else?

Page 363

1 A. Yes.

2 Q. And is he chief intelligence
3 officer at Marywood University?

4 A. I believe the title is chief
5 information officer.

6 Q. At Marywood?

7 A. Yes.

8 Q. Did you ever tell him to keep
9 his eyes and ears open?

10 A. That sounds like something I
11 would have written in an e-mail.

12 Q. Why did you do that?

13 A. Oh, if he heard anything, any
14 chatter about the case or something or
15 whatever is going on at Marywood that
16 might be of interest to me. That's all.

17 Q. Why would you do that -- e-mail
18 that to Tony at his private e-mail
19 account, not his Marywood University
20 e-mail account?

21 A. We often e-mailed each other
22 back and forth on, you know, short quick
23 things about whatever we were doing.

24 Q. Any reason you wouldn't have

Page 365

1 A. Who's currently employed at --
2 currently employed at Marywood? Is that
3 the question? Nobody -- nobody regularly.
4 I might -- I might say if there's a story
5 in the newspaper about Africa, I might
6 have e-mailed Jeremy Rich in the past year
7 or so and said, you know, how are the kids
8 doing, but nothing -- I believe that's it.

9 Q. Have you --

10 A. Oh, wait. Excuse me, one more.
11 Chris Troiani who works at the Regina
12 desk. I'll have an occasional friendly
13 e-mail with her.

14 Q. Have you spoken to Chris,
15 Marty, or anyone else at Marywood about
16 this case?

17 A. No.

18 - - -

19 (At this time, photographs were
20 marked for identification as Exhibit
21 Fagal-46.)

22 - - -

23 BY MS. PEET:

24 Q. Mr. Fagal, these pictures were

92 (Pages 362 to 365)

Page 366

1 just produced to us.

2 A. Yes.

3 Q. What are they?

4 A. I was going through my -- I was
5 getting a new phone or my phone died. My
6 Note 3 died and I was looking for Note 3
7 and I found my old Droid X phone. I had a
8 backup file from there from years ago, and
9 so I had forgotten that I took these
10 pictures, and these were quickly taken, I
11 guess, on November 28th showing where some
12 posters I had hung that were no longer
13 there on November 28th. I had gone
14 around. I had always planned to after the
15 speech was over. I had always planned to
16 take down the posters just to clean up and
17 not have them up any longer than they
18 needed to be. That's why I used the blue
19 painter's tape, so it'd be easy to take
20 off.

21 And so as I was going around to
22 take off posters that had been hung up
23 that morning, I was finding that -- and
24 any others that might, you know, be

Page 367

1 evidence that had not been torn down
2 before, I found that posters where I had
3 hung them were missing. So -- from where
4 I had hung them that very day. So I just
5 took quick pictures.

6 MS. PEET: I have no further
7 questions, but I do want to put on
8 the record that we just received an
9 additional document production from
10 you. It was sent to us over the
11 weekend which we couldn't access
12 until Monday for technical reasons;
13 one of which was a 141-page damages
14 analysis.

15 We obviously haven't gone
16 through it in fine detail yet but we
17 reserve the right to bring you back
18 if we need to given the obvious late
19 production and your deposition being
20 deposed -- being noticed for today.

21 THE WITNESS: Yes. That would
22 be an updated Rule 26 from January
23 25th, I believe.

24 MR. COHEN: How much time do we

Page 368

1 have left?

2 ---

3 THE VIDEOGRAPHER: We're now
4 off the record. The time is 5:42
5 p.m.

6 ---

7 (At this time, a short break
8 was taken.)

9 ---

10 THE VIDEOGRAPHER: We are now
11 on the record. The time is 5:46 p.m.

12 ---

13 BY MR. COHEN:

14 Q. Okay.

15 Fred, we know each other. I'm
16 Jonathan Cohen. I'm your attorney. I
17 just have a few questions for you.

18 And earlier today, do you
19 remember being asked -- you were shown a
20 copy of your interrogatory answers, and
21 one of the questions was something to the
22 effect of are you aware of any other
23 Marywood tenured professor who --

24 A. Had done something similar to

Page 369

1 what I did?

2 Q. -- who had done things similar
3 to what you had done, and you had written
4 Laurie McMillan, correct?

5 A. Correct.

6 Q. And Ms. Peet had asked you a
7 little bit about it.

8 And do you have any more
9 information to provide about why
10 Ms. McMillan's case is similar to your
11 case?

12 A. Well, besides the public
13 protest in her case of carrying a sign, a
14 gathering I think for the 100th
15 anniversary, I remember reading in -- I
16 think one of the -- either The Wood Word
17 or -- I believe it was The Wood Word or
18 the Scranton Times, but I think it was The
19 Wood Word about Laurie McMillan was upset
20 with decision-making at the university in
21 terms of finances and the money spent on
22 learning commons, and the Scranton School
23 for the Deaf property, and various
24 expensive renovations to the president's

93 (Pages 366 to 369)

Page 370

1 house.

2 And so there's general worry
3 about what was seen by Ms. McMillan and I
4 understand from others about financial
5 mismanagement, and so Ms. McMillan had
6 some fliers that she placed in the rotunda
7 and in public places around campus, and in
8 one case Ann Boland-Chase, who is an
9 administrator, again, according to the
10 news story went around and picked up those
11 fliers and confiscated them, if you will.

12 And I guess there was a quote
13 -- a story in that news story about how
14 faculty members were quite upset, many of
15 them. They -- according to the news
16 story, there had been attempts through the
17 faculty senate to work with the
18 administration, but there were many
19 professors who were not happy with what
20 had happened. And Alan Levine was quoted
21 something to the effect of, well, if
22 anybody was upset, they could come in and
23 we could have ways of discussing that in
24 private.

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1 And so in that sense,
2 Ms. McMillan had protested decision-making
3 by the president and I believe Joe Garvey
4 and had not gotten any satisfaction, and
5 so she turned to fliers, or handouts, or
6 something similar placed around campus
7 which had been gathered up, at least some
8 of them by -- from what I read -- again, I
9 was not there, by Ann Boland-Chase. So I
10 think the similarities are to be drawn by
11 somebody who looks at both cases.

12 Q. Okay.

13 Also, earlier today Ms. Peet
14 asked you, I think in sum and substance,
15 do you have any evidence that anyone in
16 the Marywood administration took down your
17 posters because they didn't like the FIRE
18 organization or its principles.

19 Do you remember something like
20 that?

21 A. Yes. I remember the --

22 MS. PEET: Objection,
23 mischaracterization of question.

24 THE WITNESS: Pardon me.

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1 MS. PEET: I'm just asserting
2 an objection for the record.

3 BY MR. COHEN:

4 Q. I didn't ask a question yet
5 either.

6 A. Okay.

7 Q. I just said do you remember
8 that.

9 A. Yes.

10 Q. Yeah.

11 Do you have Exhibit-10 in front
12 of you still? Can you turn to that?

13 A. I'd have to dig and have luck
14 finding it some sort of way. I did find
15 10.

16 Q. Okay.

17 And, briefly, what is this
18 document again?

19 A. I had met with Alan Levine and
20 tried to understand who tore down the
21 posters and why, and I had -- we
22 disagreed. We couldn't come to agreement
23 about what had happened, and that's why
24 Alan wrote we have a different

Page 373

1 understanding of what transpired.

2 Q. And so you and Dr. Levine had a
3 meeting about the removal of the FIRE
4 posters, correct?

5 A. Yes. I tried to clear that up.

6 Q. And you had made a number of
7 requests, you know, including to be
8 reimbursed?

9 A. Yes.

10 Q. Do you remember that?

11 A. Yes.

12 Q. We talked --

13 A. I showed him that -- that
14 letter and he asked for the e-mail copy,
15 and I sent it to him and he forwarded that
16 to President Munley.

17 Q. Right.

18 And do you see in this
19 Exhibit-10, this letter from Dr. Levine,
20 in the second paragraph, first sentence,
21 it says Sister Anne Munley and I remain
22 open to future presentations that are not
23 in conflict with our mission statement or
24 core values and are organized according to

Page 374

1 our policies and practices?

2 A. Yes.

3 Q. From that sentence, did you
4 understand that Dr. Levine was suggesting
5 that presentations from FIRE are not in
6 line -- not in -- are not in line with
7 Marywood's mission statement or core
8 values?

9 MS. PEET: Objection, absolute
10 leading. Why don't you rephrase
11 that.

12 MR. COHEN: Excuse me.

13 MS. PEET: I think you should
14 rephrase that.

15 BY MR. COHEN:

16 Q. First sentence of paragraph
17 two, why don't you explain to me -- do you
18 understand Dr. Levine to have been making
19 any characterizations about FIRE?

20 MS. PEET: Objection, leading.

21 BY MR. COHEN:

22 Q. You can answer.

23 A. I did not take this as
24 necessary -- I took this more as

Page 376

1 trying to keep the attendance down.

2 And so there was certain animus
3 shown in those e-mails I read in discovery
4 against FIRE. Whether they would actually
5 step up publicly and not allow FIRE to
6 come in the future, I would assume they
7 wouldn't have done that but they might not
8 have given any money.

9 MR. COHEN: I have no further
10 questions.

11 MS. PEET: Just a couple of
12 follow-ups.

13 ---

14 BY MS. PEET:

15 Q. With reference to the McMillan
16 incident that your attorney just talked to
17 you --

18 A. Yes.

19 Q. -- about, again, you have all
20 of this information from what you read in
21 a newspaper, correct?

22 A. That's correct.

23 Q. Are you aware, either from
24 reading the newspaper or otherwise, that

Page 375

1 boilerplate university, shall I say,
2 reason for not allowing a debate on
3 something where the other side of the
4 debate would be against what were
5 perceived as the university's core values.

6 So it could be in some
7 instances if there was an abortion debate,
8 pro and anti-abortion, perhaps if the
9 university -- I'm not saying Marywood --
10 said we can't have that discussion even
11 raised on our campus because it's against
12 our core values, so, therefore, we will
13 not allow a debate.

14 Or I know that the university
15 -- I know there was a case of a student a
16 few years ago who tried to start an
17 atheist club at the university. That was
18 denied. So I didn't -- when I read this,
19 I did not think it necessarily pertained
20 to FIRE but it could have, you know. They
21 didn't -- certainly they did not like FIRE
22 I don't think. I think there's evidence
23 of that by e-mails in the discovery where
24 they're talking about Will Creeley and

Page 377

1 after Ms. McMillan protested and Ann Chase
2 took down the fliers, whether or not she
3 made a video depicting Sister Munley as
4 Hitler?

5 A. I have no knowledge.

6 MS. PEET: No further
7 questions.

8 ---

9 THE VIDEOGRAPHER: We are now
10 off the record. The time is 5:56
11 p.m. This ends disk number four and
12 today's deposition.

13 ---

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CERTIFICATION

I, Edward J. Ruggeri,
Registered Professional Reporter,
Certified Court Reporter and Notary
Public, do hereby certify that the
foregoing is a true and accurate
transcript of the stenographic notes taken
by me in the aforementioned matter.

DATE: _____
Edward J. Ruggeri, RPR, CCR

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LAWYER'S NOTES

PAGE LINE

96 (Pages 378 to 379)

Exhibit 4

MARYWOOD COLLEGE
Scranton, Pennsylvania
AGREEMENT and APPOINTMENT
for
FULL-TIME FACULTY

TERMS OF THIS AGREEMENT are offered on the 1st day of March, A.D. 1992
to Dr. Frederick E. Pagani, Jr.

17 East Lake Street, Shamong, NJ 08082
party of the first part, by Marywood College, a non-profit corporation, created and existing by and under the laws of the Commonwealth of Pennsylvania, party of the second part.

The parties witness that, in consideration of the mutual promises and agreements herein contained, the following terms are in effect from September 1, 1992 to May 31, 1993:

(1) Type of Appointment Full-Time (9 Months)

Rank Assistant Professor

Department Social Science (7080)

Responsibility to Department Chairperson

Salary \$ 35,250.00 per 9 Months

Employee Benefits:

Social Security (FICA) \$ 2,590.00

Retirement (TIAA-CREF) 1,760.00

Hosp. Ins. (B.C.-B.S.-M.M.) 5,010.00

Workers' Compensation 400.00

Total Disability Ins. (TIAA) 230.00

Life Insurance (TIAA) 150.00

Total Compensation \$ 45,250.00

- (2) The policies and practices listed in the Faculty Manual are agreed upon by the parties hereto.
- (3) Benefits other than Social Security must be applied for by the faculty member at the Office of Personnel Services. Failure to apply indicates waiver of the benefit.
- (4) This signed Agreement must be returned to the President's office by the date specified.
- (5) U.S. Government form W-4 must be on file in the Office of Personnel Services.

IN WITNESS WHEREOF, the said parties have hereunto agreed to the above terms and have set their hands at Marywood College, in said State, as follows:

March 21, 1992
Date Accepted

(Signed) Frederick E. Pagani, Jr.
First Party

Date Executed

(Signed) _____
President